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# ANCIENT FACTS AND FICTIONS

CONCERNING

# CHURCHES AND TITHES



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## CHURCHES AND TITHES

BY

ROUNDELL, EARL OF SELBORNE

AUTHOR OF

'A DEFENCE OF THE CHURCH OF ENGLAND AGAINST DISESTABLISHMENT'

London

MACMILLAN AND CO.

AND NEW YORK

1888

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TO

MY VERY DEAR BROTHER

EDWIN PALMER, D.D.

ARCHDEACON OF OXFORD AND CANON OF CHRIST CHURCH

THIS BOOK IS

AFFECTIONATELY INSCRIBED

# PREFACE

My purpose is to examine, in the following pages, more fully and critically than was possible in a former work,[1] some historical questions, which, although they have not any real bearing upon controversies of the present day, are sometimes represented as if they had, in a way which makes it desirable that the facts concerning them should be understood. In my former work I preferred, whenever it was possible, to support my statements on those subjects by the authority of other writers, particularly Selden; whose views I regarded as generally, though not on every point, accurate. We have now the benefit of many great collections, made since Selden's time, of ecclesiastical and historical documents; and manuscripts, with which he was not acquainted, have been published or brought to light. The advantages which we so possess leave room for something to be added to his researches, sometimes by way of

[1] *Defence of the Church of England against Disestablishment* (Macmillan, 3rd ed. 1887).

verification or illustration, sometimes by way of correction and supplement.

The period of time which the present work is intended to illustrate is that which preceded the Norman Conquest of England. It is divided into two parts; the first relating to Continental Churches, a knowledge of whose laws and customs (though different from our own) may frequently throw useful light upon those of this country; the second, to the Anglo-Saxon Church. In the second part some space has been necessarily devoted to the criticism of ancient documents; which (although I am sensible that it may make a considerable demand upon the patience of my readers) was indispensable for the purpose which I had in view. The work, in its general conception, may perhaps be best described as an attempt to trace the course of those developments of early ecclesiastical institutions, which resulted in the formation of the modern parochial system, and its general endowment with tithes.

In the preparation of the materials for this work, I have received ready and courteous assistance (for which I desire to return my grateful acknowledgments) from the principal librarian, and keeper of the manuscripts, of the British Museum, and their Assistants; and also from the authorities of the Bodleian Library, particularly Falconer Madan, Esq. And to the Rev. S. S. Lewis, Fellow and Librarian of Corpus Christi College, Cambridge, and the Master and

other members of that learned Society, I owe thanks, not only for the facilities given to me while consulting some of the manuscript treasures of their library, but for the more than ordinary personal kindness with which those facilities were accompanied. Nor can I be silent as to my obligations to my brother, the Archdeacon of Oxford (to whom this volume is inscribed), for most valuable help received from him in many ways.

*December* 1887.

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# INTRODUCTION

As I shall have frequent occasion to refer to the civil legislation of the Frank kingdom and empire concerning ecclesiastical affairs, and to the Roman Canon Law, some preliminary observations on the relations of the Ecclesiastical to the Civil Power down to the end of the tenth century, and upon the gradual development of Roman Canon Law, may be desirable.

## § 1. *Church and State.*

It is unnecessary to inquire whether the patriarchal authority of the Popes in Western Christendom, and the precedence conceded to the See of Rome even in the East, arose out of the tradition which represented the Apostles St. Peter and St. Paul as the original founders of that See, or from the dignity of Rome as the capital of the ancient world. The tradition was certainly ancient; but it is at least as certain that the local distribution of the power of government in the early Church was determined, generally, by the existing civil organisation. Even in the work of the false Isidore, St. Peter[1] is made to instruct his successor,

[1] *Decretales Pseudo-Isidorianæ*, etc. (Hinschius, Leipsic 1863, p. 39).

Clement, to place patriarchs and primates of the highest rank and authority in those cities where the heathens had their 'Flamens' and judges of the first order; and archbishops of subordinate rank in smaller cities, where there had been 'Arch-Flamens' of lower degree than the highest. Anacletus (next but one in succession to Clement) and Lucius, nineteenth after Anacletus, are also represented, in supposed decretals (embodied as to this point in Gratian's Code)[1] as re-asserting the same principle. Whatever may have been the cause, the fact is indisputable, that some pre-eminence belonged to the See of Rome; and also, that the authority which accompanied it was less in the Eastern and other Churches which had not, directly or indirectly, derived their Christianity from Rome, than in those nations and races which had.

The influence of the Popes varied with their circumstances and opportunities, and with their personal qualities. On theological questions the influence of a great Pope, such as Leo I., was often very great. But in other respects, and especially during the centuries of decay which preceded the extinction of the Roman Empire in the west,—during the wars and ravages, in Italy and elsewhere, of Goths, Huns, Vandals, Lombards, and Franks,—the Primacy of the Roman See was, for a long time, honorary rather than practical. Its main symbol was the 'Pall,'[2] which it was usual for the Pope to confer upon archbishops or metropolitans, and without which the dignity of those offices was not deemed complete. Even of Gregory the Great it is said by Gibbon,[3] that 'his ecclesiastical jurisdiction was

[1] *Decretum*, pars i., dist. 80, cap. 1; and 99, cap 1.

[2] See, as to the *pallium*, *Decretum*, pars i., dist. 100. The citation in cap. 1 from Pelagius is not of that Pope's time.

[3] *Decline and Fall*, ch. 45 (vol. v. p. 479; ed. 1828).

confined to the triple character of Bishop of Rome, Primate of Italy, and Apostle of the West.'

Both in the Frank kingdom and empire, from the conversion of Clovis (A.D. 496), and in the Gothic kingdom of Spain (A.D. 506-711), the civil power interfered in ecclesiastical affairs. It will be sufficient to advert to the manner in which it did so in the greater of those States, the Frank kingdom and empire.

1. *As to Legislation.* — Even under the Merovingian dynasty it was not held lawful to convene ecclesiastical synods without the royal permission. Sigebert II.,[1] a prince of high reputation for sanctity (about A.D. 650), forbade this. Kings and emperors often called together ecclesiastical councils;[2] of which those of the year A.D. 813,[3] and the imperial ordinance[4] confirming twenty-eight of their constitutions, may be taken as examples. Their confirmation was necessary[5] to give force to canons passed by any such synod. They also, in mixed councils of laymen and ecclesiastics (held in the manner usual for the enactment of secular laws), legislated directly for the Church, on disciplinary and other questions. A striking instance is found in the capitulars of A.D. 789,[6] derived in great measure from the Code of Oriental Canons[7] which Charlemagne had six years before (A.D. 773) received at Rome from the hand of Pope Adrian I. Those capit-

[1] Baluze, *Capit.*, vol. i. p. 143.

[2] Francis de Roye (*apud* Mansi, *Concil.*, vol. xvii. p. 938).

[3] Arles vi., Tours iii., Chalons, Rheims, Mentz (Mansi, *Concil.*, vol. xiv.)

[4] Baluze, *Capit.*, vol. i. p. 503. (The synods are described in the title as '*Auctoritate Regia nuper habitis.*')

[5] Baluze, Preface (*Capit.*, vol. i. pp. 8, 9).

[6] Baluze, *Capit.*, vol. i. p. 209.

[7] Mansi, *Concil.*, vol. xii. p. 859.

ulars, enacted in the name of and with a preface from Charlemagne himself, are a series of purely ecclesiastical constitutions, extending over important points of doctrine as well as discipline. Some of them were addressed to bishops; some to priests; some to 'all the clergy;' some to 'clerks and monks;' some to 'all men.'

Such legislation as this was not, in the ninth century, regarded as an encroachment by the secular upon the spiritual power. Gratian, in a 'Distinction,'[1] in which he insists upon the principle that secular are subordinate to ecclesiastical constitutions, quotes a letter of Pope Leo IV. to the Emperor Lothair (written about A.D. 847), in which that Pope engaged to observe inviolate and for ever the imperial capitulars and ordinances of Lothair and his predecessors. 'If, perchance' (he added), 'any one may have told or shall tell you otherwise, be "assured that he speaks falsely."'

2. *As to Judicature.*—Charlemagne, by one of his Lombard laws,[2] exempted abbots, priests, deacons, subdeacons, and clerks generally, from secular jurisdiction, referring the decision of causes concerning them to the bishops. That privilege, however, was not without exceptions. Royal Commissioners (*Missi Dominici*) took cognisance of criminal offences[3] against the general public law, though committed by clerks. And the course as to questions of property, private or ecclesiastical, in which the clergy were concerned, was this:[4] the civil judge, before whom a claim was made to any such property, sent the claimant to the bishop with

[1] Dist. 10. Some of these capitulars (so described) are embodied in the *Decretum*.

[2] *Leg. Longob.*, lib. iii., tit. i., cap. 11.

[3] De Roye, *De Missis Dominicis* (*apud* Mansi, vol. xvii. p. 926).

[4] *Ibid.*, pp. 915, 916.

a civil 'advocate,' whose duty it was to see justice done. If the parties still failed to arrive at a settlement, the cause was then remitted to the Count, or civil judge, before whom the bishop, in his turn, was represented by an advocate of his choice, and the matter was determined according to law.

It was not till a later period, after the publication of Ingilram's canons and the false decretals, that the supreme judicial authority of the Pope was acknowledged.

3. *As to Faith and Ritual.*—When the Eastern Church, in the second Council of Nicæa, pronounced in favour of image-worship, Charlemagne took a decided part in opposing its decrees. The 'Caroline books,'[1] composed for that purpose by his order, and published in his name, were sent by him (A.D. 790) to Pope Adrian I.; and, notwithstanding the support which that Pope gave to the Council, he communicated them (A.D. 792) to the Anglo-Saxon bishops,[2] and afterwards (A.D. 794) procured from the Synod of Frankfort[3] an emphatic condemnation of that practice. In A.D. 788 he ordered a revision of the service-books used in the churches of his dominions to be made by Paul the Deacon, of Aquileia;[4] and he 'estab-

[1] Moreri's *Dictionnaire Historique*, etc., *voce* 'Carolins.' Gibbon, *Decline and Fall*, cap. 49 (vol. vi. p. 232, note; ed. 1828).

[2] See Symeon of Durham (Savile's *Hist. Angl. Script.*, p. 113, and Haddan and Stubbs, *Councils*, etc., vol. iii. p. 469, note). Alcuin is supposed to have been the writer of the reply sent by the English bishops to the King, and he was probably the bearer of Charlemagne's communication.

[3] Mansi, vol. xiii. p. 99.

[4] Moreri, *Paul, diacre;* Baluze, *Capit.*, vol. i. pp. 204-206. Paul had been secretary to Desiderius, the last Lombard king. Charlemagne's letter, ordering the use of the book, was addressed *religiosis lectoribus* of his kingdom.

lished'[1] the use of a book,[2] in two volumes, with lessons or 'homilies' for readings throughout the year (which Paul had collected from the Fathers), in the churches of his kingdom. In the diocese of Liége, when Emperor, he interposed his authority to postpone the public baptism[3] of certain candidates who were found insufficiently instructed, and he appointed a special fast, and commanded the bishop to give notice of it in all the greater churches of his diocese.[4]

4. *As to Church Appointments.*—The consent of civil rulers to the election of bishops was required[5] from early times. The twelfth Council of Toledo[6] (A.D. 681) authorised the consecration, by the Archbishop of Toledo, of such persons as the King might choose (being judged fit by the archbishop), to fill all vacant sees in any province of the Spanish or 'Gallician' Church. The Frank Kings and Emperors appointed directly to vacant bishoprics and abbacies,[7] until a law qualifying that power, by allowing the 'clergy and people' to elect bishops, by license from the

[1] *Quarum omnium textum nostra sagacitate perpendentes, nostra eadem volumina auctoritate constabilimus, vestræque religioni in Christi ecclesiis tradimus ad legendum.*

[2] The book was printed at Spires, A.D. 1472, and extracts from it were reprinted by Mabillon, and in the ninth volume of Martene and Durand's *Amplissima Collectio.*

[3] Martene and Durand, *Ampl. Coll.*, vol. vii. p. 19.

[4] *Ibid.*, p. 21.

[5] See letter of Gregory the Great (A.D. 592), lib. ii., ep. 23 (St. Maur edition of Gregory's works); *Decretum*, pars i., dist. 63, cap. 9.

[6] See *Decret.*, pars i., dist. 63, cap. 25.

[7] See petition, *Cleri plebisque viduatæ civitatis ad Regem* (Baluze, *Capit.*, vol. ii. p. 379); and Sirmondi's note, *De antiquis Episcoporum promotionibus*, in Mansi, *Concil.*, vol. xvi., App., p. 879. The fifth Council of Paris (A.D. 615) had in vain declared for freedom of election (Mansi, vol. x. p. 539).

sovereign, and subject to his approval of the person elected, was passed (A.D. 816) by Louis the Simple.[1] It may be inferred, from a later address of the second Council of Aix-la-Chapelle to the same Emperor[2] (A.D. 836), praying him to be vigilant in the appointment of good pastors and rulers to churches, that the substantial power remained with him. Popes of the ninth century, Leo IV.[3] and Stephen V.,[4] recognised the necessity, in all cases, of the imperial license to elect, and the imperial consent to an election. Adrian I. (according to the history of Sigebert of Gembloux, composed A.D. 1112, and quoted as authentic in Gratian's *Decretum*)[5] conceded to Charlemagne (A.D. 774), in a synod held at Rome, and attended by 153 bishops, the investiture of all archbishops and bishops, in all provinces of his realm, forbidding their consecration until accepted and invested by the King, and threatening excommunication and other severe penalties against all who should contravene that decree. The same concession, under still heavier penalties, was renewed to the German Emperor, Otho I., by Leo VIII.,[6] in A.D. 963; and the system of royal investiture, so sanctioned by Popes, continued to prevail until the time of Gregory VII.

These concessions to the imperial power were accompanied by another, greater still. By the same synodical

[1] Sirmondi's note, *ubi supra* (and see Baluze, *Capit.*, vol. i. p. 566).

[2] Mansi, vol. xiv. p. 690 (art. 9). See the Forms of Petition and License, etc., in Baluze, *Capit.*, vol. ii. pp. 379, 509, 591, 594, 595, 601. A 'Visitor,' appointed by the Crown, presided at these elections.

[3] *Decretum*, pars i., dist. 63, cap. 16, 17. [4] *Ibid.*, cap. 18.

[5] *Ibid.*, cap. 22 (and see Richter's note, *Corp. Jur. Canon.*, Leipsic 1839, p. 207). See also on this point the Chronicle of John, Abbot of Peterborough, who places the grant in A.D. 772 (*Chronicon Angliæ*, in *Historiæ Anglicanæ Scriptores Veteres*, London 1724, pp. 8, 9).

[6] *Decretum*, *ubi supra*, cap. 23 (see Richter's note).

## APPENDICES

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# INTRODUCTION

As I shall have frequent occasion to refer to the civil legislation of the Frank kingdom and empire concerning ecclesiastical affairs, and to the Roman Canon Law, some preliminary observations on the relations of the Ecclesiastical to the Civil Power down to the end of the tenth century, and upon the gradual development of Roman Canon Law, may be desirable.

## § 1. *Church and State.*

It is unnecessary to inquire whether the patriarchal authority of the Popes in Western Christendom, and the precedence conceded to the See of Rome even in the East, arose out of the tradition which represented the Apostles St. Peter and St. Paul as the original founders of that See, or from the dignity of Rome as the capital of the ancient world. The tradition was certainly ancient; but it is at least as certain that the local distribution of the power of government in the early Church was determined, generally, by the existing civil organisation. Even in the work of the false Isidore, St. Peter[1] is made to instruct his successor,

[1] *Decretales Pseudo-Isidorianæ*, etc. (Hinschius, Leipsic 1863, p. 39).

Clement, to place patriarchs and primates of the highest rank and authority in those cities where the heathens had their 'Flamens' and judges of the first order; and archbishops of subordinate rank in smaller cities, where there had been 'Arch-Flamens' of lower degree than the highest. Anacletus (next but one in succession to Clement) and Lucius, nineteenth after Anacletus, are also represented, in supposed decretals (embodied as to this point in Gratian's Code)[1] as re-asserting the same principle. Whatever may have been the cause, the fact is indisputable, that some pre-eminence belonged to the See of Rome; and also, that the authority which accompanied it was less in the Eastern and other Churches which had not, directly or indirectly, derived their Christianity from Rome, than in those nations and races which had.

The influence of the Popes varied with their circumstances and opportunities, and with their personal qualities. On theological questions the influence of a great Pope, such as Leo I., was often very great. But in other respects, and especially during the centuries of decay which preceded the extinction of the Roman Empire in the west,—during the wars and ravages, in Italy and elsewhere, of Goths, Huns, Vandals, Lombards, and Franks,—the Primacy of the Roman See was, for a long time, honorary rather than practical. Its main symbol was the 'Pall,'[2] which it was usual for the Pope to confer upon archbishops or metropolitans, and without which the dignity of those offices was not deemed complete. Even of Gregory the Great it is said by Gibbon,[3] that 'his ecclesiastical jurisdiction was

[1] *Decretum*, pars i., dist. 80, cap. 1; and 99, cap 1.

[2] See, as to the *pallium*, *Decretum*, pars i., dist. 100. The citation in cap. 1 from Pelagius is not of that Pope's time.

[3] *Decline and Fall*, ch. 45 (vol. v. p. 479; ed. 1828).

confined to the triple character of Bishop of Rome, Primate of Italy, and Apostle of the West.'

Both in the Frank kingdom and empire, from the conversion of Clovis (A.D. 496), and in the Gothic kingdom of Spain (A.D. 506-711), the civil power interfered in ecclesiastical affairs. It will be sufficient to advert to the manner in which it did so in the greater of those States, the Frank kingdom and empire.

1. *As to Legislation.* — Even under the Merovingian dynasty it was not held lawful to convene ecclesiastical synods without the royal permission. Sigebert II.,[1] a prince of high reputation for sanctity (about A.D. 650), forbade this. Kings and emperors often called together ecclesiastical councils;[2] of which those of the year A.D. 813,[3] and the imperial ordinance[4] confirming twenty-eight of their constitutions, may be taken as examples. Their confirmation was necessary[5] to give force to canons passed by any such synod. They also, in mixed councils of laymen and ecclesiastics (held in the manner usual for the enactment of secular laws), legislated directly for the Church, on disciplinary and other questions. A striking instance is found in the capitulars of A.D. 789,[6] derived in great measure from the Code of Oriental Canons[7] which Charlemagne had six years before (A.D. 773) received at Rome from the hand of Pope Adrian I. Those capit-

[1] Baluze, *Capit.*, vol. i. p. 143.

[2] Francis de Roye (*apud* Mansi, *Concil.*, vol. xvii. p. 938).

[3] Arles vi., Tours iii., Chalons, Rheims, Mentz (Mansi, *Concil.*, vol. xiv.)

[4] Baluze, *Capit.*, vol. i. p. 503. (The synods are described in the title as '*Auctoritate Regia nuper habitis.*')

[5] Baluze, Preface (*Capit.*, vol. i. pp. 8, 9).

[6] Baluze, *Capit.*, vol. i. p. 209.

[7] Mansi, *Concil.*, vol. xii. p. 859.

ulars, enacted in the name of and with a preface from Charlemagne himself, are a series of purely ecclesiastical constitutions, extending over important points of doctrine as well as discipline. Some of them were addressed to bishops; some to priests; some to 'all the clergy;' some to 'clerks and monks;' some to 'all men.'

Such legislation as this was not, in the ninth century, regarded as an encroachment by the secular upon the spiritual power. Gratian, in a 'Distinction,'[1] in which he insists upon the principle that secular are subordinate to ecclesiastical constitutions, quotes a letter of Pope Leo IV. to the Emperor Lothair (written about A.D. 847), in which that Pope engaged to observe inviolate and for ever the imperial capitulars and ordinances of Lothair and his predecessors. 'If, perchance' (he added), 'any one may have told or shall tell you otherwise, be "assured that he speaks falsely."'

2. *As to Judicature.*—Charlemagne, by one of his Lombard laws,[2] exempted abbots, priests, deacons, subdeacons, and clerks generally, from secular jurisdiction, referring the decision of causes concerning them to the bishops. That privilege, however, was not without exceptions. Royal Commissioners (*Missi Dominici*) took cognisance of criminal offences[3] against the general public law, though committed by clerks. And the course as to questions of property, private or ecclesiastical, in which the clergy were concerned, was this:[4] the civil judge, before whom a claim was made to any such property, sent the claimant to the bishop with

[1] Dist. 10. Some of these capitulars (so described) are embodied in the *Decretum*.

[2] *Leg. Longob.*, lib. iii., tit. i., cap. 11.

[3] De Roye, *De Missis Dominicis* (*apud* Mansi, vol. xvii. p. 926).

[4] *Ibid.*, pp. 915, 916.

a civil 'advocate,' whose duty it was to see justice done. If the parties still failed to arrive at a settlement, the cause was then remitted to the Count, or civil judge, before whom the bishop, in his turn, was represented by an advocate of his choice, and the matter was determined according to law.

It was not till a later period, after the publication of Ingilram's canons and the false decretals, that the supreme judicial authority of the Pope was acknowledged.

3. *As to Faith and Ritual.*—When the Eastern Church, in the second Council of Nicæa, pronounced in favour of image-worship, Charlemagne took a decided part in opposing its decrees. The 'Caroline books,'[1] composed for that purpose by his order, and published in his name, were sent by him (A.D. 790) to Pope Adrian I.; and, notwithstanding the support which that Pope gave to the Council, he communicated them (A.D. 792) to the Anglo-Saxon bishops,[2] and afterwards (A.D. 794) procured from the Synod of Frankfort[3] an emphatic condemnation of that practice. In A.D. 788 he ordered a revision of the service-books used in the churches of his dominions to be made by Paul the Deacon, of Aquileia;[4] and he 'estab-

[1] Moreri's *Dictionnaire Historique*, etc., *voce* 'Carolins.' Gibbon, *Decline and Fall*, cap. 49 (vol. vi. p. 232, note; ed. 1828).

[2] See Symeon of Durham (Savile's *Hist. Angl. Script.*, p. 113, and Haddan and Stubbs, *Councils*, etc., vol. iii. p. 469, note). Alcuin is supposed to have been the writer of the reply sent by the English bishops to the King, and he was probably the bearer of Charlemagne's communication.

[3] Mansi, vol. xiii. p. 99.

[4] Moreri, *Paul, diacre;* Baluze, *Capit.*, vol. i. pp. 204-206. Paul had been secretary to Desiderius, the last Lombard king. Charlemagne's letter, ordering the use of the book, was addressed *religiosis lectoribus* of his kingdom.

lished'[1] the use of a book,[2] in two volumes, with lessons or 'homilies' for readings throughout the year (which Paul had collected from the Fathers), in the churches of his kingdom. In the diocese of Liége, when Emperor, he interposed his authority to postpone the public baptism[3] of certain candidates who were found insufficiently instructed, and he appointed a special fast, and commanded the bishop to give notice of it in all the greater churches of his diocese.[4]

4. *As to Church Appointments.*—The consent of civil rulers to the election of bishops was required[5] from early times. The twelfth Council of Toledo[6] (A.D. 681) authorised the consecration, by the Archbishop of Toledo, of such persons as the King might choose (being judged fit by the archbishop), to fill all vacant sees in any province of the Spanish or 'Gallician' Church. The Frank Kings and Emperors appointed directly to vacant bishoprics and abbacies,[7] until a law qualifying that power, by allowing the 'clergy and people' to elect bishops, by license from the

[1] *Quarum omnium textum nostra sagacitate perpendentes, nostra eadem volumina auctoritate constabilimus, vestræque religioni in Christi ecclesiis tradimus ad legendum.*

[2] The book was printed at Spires, A.D. 1472, and extracts from it were reprinted by Mabillon, and in the ninth volume of Martene and Durand's *Amplissima Collectio.*

[3] Martene and Durand, *Ampl. Coll.*, vol. vii. p. 19.

[4] *Ibid.*, p. 21.

[5] See letter of Gregory the Great (A.D. 592), lib. ii., ep. 23 (St. Maur edition of Gregory's works); *Decretum*, pars i., dist. 63, cap. 9.

[6] See *Decret.*, pars i., dist. 63, cap. 25.

[7] See petition, *Cleri plebisque viduatæ civitatis ad Regem* (Baluze, *Capit.*, vol. ii. p. 379); and Sirmondi's note, *De antiquis Episcoporum promotionibus*, in Mansi, *Concil.*, vol. xvi., App., p. 879. The fifth Council of Paris (A.D. 615) had in vain declared for freedom of election (Mansi, vol. x. p. 539).

sovereign, and subject to his approval of the person elected, was passed (A.D. 816) by Louis the Simple.[1] It may be inferred, from a later address of the second Council of Aix-la-Chapelle to the same Emperor[2] (A.D. 836), praying him to be vigilant in the appointment of good pastors and rulers to churches, that the substantial power remained with him. Popes of the ninth century, Leo IV.[3] and Stephen V.,[4] recognised the necessity, in all cases, of the imperial license to elect, and the imperial consent to an election. Adrian I. (according to the history of Sigebert of Gembloux, composed A.D. 1112, and quoted as authentic in Gratian's *Decretum*)[5] conceded to Charlemagne (A.D. 774), in a synod held at Rome, and attended by 153 bishops, the investiture of all archbishops and bishops, in all provinces of his realm, forbidding their consecration until accepted and invested by the King, and threatening excommunication and other severe penalties against all who should contravene that decree. The same concession, under still heavier penalties, was renewed to the German Emperor, Otho I., by Leo VIII.,[6] in A.D. 963; and the system of royal investiture, so sanctioned by Popes, continued to prevail until the time of Gregory VII.

These concessions to the imperial power were accompanied by another, greater still. By the same synodical

[1] Sirmondi's note, *ubi supra* (and see Baluze, *Capit.*, vol. i. p. 566).

[2] Mansi, vol. xiv. p. 690 (art. 9). See the Forms of Petition and License, etc., in Baluze, *Capit.*, vol. ii. pp. 379, 509, 591, 594, 595, 601. A 'Visitor,' appointed by the Crown, presided at these elections.

[3] *Decretum*, pars i., dist. 63, cap. 16, 17. [4] *Ibid.*, cap. 18.

[5] *Ibid.*, cap. 22 (and see Richter's note, *Corp. Jur. Canon.*, Leipsic 1839, p. 207). See also on this point the Chronicle of John, Abbot of Peterborough, who places the grant in A.D. 772 (*Chronicon Angliæ*, in *Historiæ Anglicanæ Scriptores Veteres*, London 1724, pp. 8, 9).

[6] *Decretum*, *ubi supra*, cap. 23 (see Richter's note).

act of Adrian I.[1] which gave Papal sanction to the royal investiture of archbishops and bishops, Charlemagne was constituted patron of the Holy See itself, with authority upon every vacancy to nominate the Pope. His son and grandson, Louis the Simple and Lothair, seem[2] to have declined the exercise of that power, and to have restored the right of election to the Roman people. In the succeeding century (A.D. 918-934, and again in A.D. 962) Henry the Fowler and Otho I. also successively[3] recognised the title to elect freely, and without interference, of 'those Romans, to whom, by ancient custom and the appointment of the Holy Father, it belonged.' But to check the disorders which followed, Pope Stephen[4] (probably the fourth of that name), and Pope John IX.[5] in a council held at Rome (A.D. 898), required the presence of Imperial legates for the validity of a Papal election. The Papacy, during the tenth and the earlier part of the eleventh century, reached its lowest point of degradation. In the next year (A.D. 963), after Otho I. had confirmed the liberty of election acknowledged by his father to belong to the Roman people, he was crowned Emperor by the Pope; and Leo VIII. synodically, and with the general assent of the clergy and people of Rome, renewed in his favour the same powers and privileges which Adrian I. had granted to Charlemagne. That synodical constitution finds (like Sigebert's narrative of the original grant) a place in Gratian's *Decretum*.[6] Until the death of Otho III. in A.D. 1002, the gravest disorders were of frequent recurrence at Papal elections, and the Popes continued to be practically dependent on the Emperors.

[1] *Decretum, ubi supra.*
[2] *Ibid.*, cap. 30, 31.
[3] *Ibid.*, cap. 32 (see Richter's note).
[4] *Ibid.*, cap. 28.
[5] *Ibid.*, Richter's note to cap. 28.
[6] *Ibid.*, cap. 23.

## § 2. *Roman Canon Law.*

1. Towards the close of the fifth century, Dionysius (called *Exiguus*, or 'the Little'), a Scythian monk,[1] at the suggestion of Stephen, Bishop of Salona in Dalmatia, made a collection[2] of 401 Oriental and African Canons, which was accepted and approved at Rome,[3] and afterwards in France, and generally by the Latin Churches. It was, doubtless, to this collection that reference was made by Theodore, Archbishop of Canterbury, at the Council of Hertford,[4] A.D. 673. To this, Dionysius is said afterwards to have added decretals of Popes Siricius and Anastasius I. (A.D. 384-402). At a later date, the same code was enlarged by the addition of other decretals of later Popes down to Gregory II. (A.D. 715).[5] It constituted, as so enlarged, the body of Canon Law which was in force at Rome down to the middle of, or later than, the ninth century. It is the same in substance with that which Adrian I. delivered (A.D. 773) to Charlemagne;[6] and with that which Leo IV. (A.D. 847-855), in a letter addressed to the 'bishops of Britain,'[7] declared to con-

[1] See Moreri, *Dictionnaire*, etc., *voce* 'Denys le Petit.'

[2] *Codex Canonum Ecclesiasticorum Dionysii Exigui* (Paris 1628).

[3] The authority for their acceptance is the contemporary historian Cassiodorus, who was minister to Theodoric the Great.

[4] Bede's *Hist.*, lib. iv., cap. 5. (See, as to the particular canons referred to by Theodore, Johnson's *Laws and Canons*, etc., Oxford ed., 1850, vol. i. pp. 90-94.)

[5] See Pithou's edition of this enlarged Code (*Codex Canonum Vetus Ecclesiæ Romanæ, Pithœi*, Paris 1687); also Sirmondi's note, Mansi, *Concil.*, vol. xii. p. 882.

[6] Mansi, *Concil.*, vol. xii. p. 859; and note, p. 882.

[7] See *Decretum*, pars i., dist. 20, cap. 1. Pope Leo IV., however, also mentioned Sylvester, whose spurious 'Acts' had been publishe before his time.

tain the laws then used by the Popes 'in all ecclesiastical judgments'; by which 'the bishops judged, and themselves, as well as the rest of the clergy, were judged.'

To this body of law ecclesiastical forgery began to make spurious additions before the end of the eighth century. Among the earliest of these forgeries were the supposed 'Acts' of Pope Sylvester[1] (A.D. 314), including the 'Donation of Constantine.'

2. In A.D. 827, Ansegisus,[2] Abbot of Fontenelle, made a collection of capitulars of Charlemagne and Louis the Simple, in four parts: the two first containing ecclesiastical, the two latter secular laws. This, though not always accurate, was an honest collection; and was known and cited before the end of Louis the Simple's reign. It was, however, incomplete; and it did not extend back to any of the constitutions of Charlemagne's predecessors.

3. To supply the deficiencies of that work, Benedict,[3] a deacon of the church of Mentz, at the suggestion of Otgar (the immediate predecessor of Rabanus Maurus in the Archbishopric of Mentz), compiled, from many miscellaneous sources, secular and ecclesiastical, public and private, Roman, Gallican, Gothic, Salic, Ripuarian, and Bavarian, authentic and unauthentic, three additional books of (real or

[1] See, as to this, Hinschius, *Commentatio de Collectione Decretalium et Canonum Isidori Mercatoris*, p. 96 (*Decretales Pseudo-Isidorianæ et Capitula Angilramni*, Leipsic 1863); Alcuin's letter of A.D. 800 to Arno, Bishop of Salzburg (ep. 108; Migne's ed., 1831, vol. i. p. 325); and Benedict the 'Levite,' lib. iv., cap. 302 (Baluze, *Capit.*, vol. i. p. 886).

[2] Baluze, *Capit.*, vol. i. p. 691 *et seq.*, and Preface, §§ 39-43.

[3] 'Benedictus Levita.' (*Levite*, in those days, was a common term for deacon.) See his three books (numbered 5, 6, and 7, after the four of Ansegisus) in Baluze, *Capit.*, vol. i. pp. 801-1132; and see Baluze's Preface, §§ 44-46. As to Benedict himself, see Moreri, *Dictionnaire*, etc., under the name 'Benoist, diacre.'

supposed) laws and canons, which he published after leaving the diocese of Mentz on the death of Otgar in A.D. 847.[1] To these he prefixed the four books of Ansegisus, making seven books in all, known from that time under his name. The earliest known citation of that collection in Western France was at a synod or assembly held at Quierzy in Picardy, under Archbishop Hincmar, in A.D. 857.

Baluze, in the preface to his *Capitulars*,[2] after specifying the materials of which Benedict so made use, says that his collection 'is patched together from all these sources, confusedly enough, without attention to any order of time, and with frequent changes in the words of the chapters referred to.' For this Baluze does not blame Benedict, who found his materials in that confused and undigested state. He cannot, however, be absolved from the charge of tampering, to some extent, with the authorities which he followed.

4. The next publication which requires mention is that under the name of Ingilram (or Angilram),[3] who was Archbishop of Metz from A.D. 768 to 791, and chaplain-general and grand-almoner to Charlemagne. It consists of eighty pretended canons, constituting a sort of code of procedure, applicable to charges against bishops, clerks, and laymen; its tendency being to exalt, as supreme and absolute, the power and authority of the Pope, and to invest the clergy with extraordinary immunities. It asserted the invalidity of all constitutions against the canons or decrees of Roman pontiffs, and the right of the Pope to set aside, by his vicars, the proceedings of provincial synods. The Pope himself was to be judged by no man, 'because the disciple is not

[1] Hinschius, *Commentatio*, etc. (*ubi supra*, part iv., cap. 1).

[2] Vol. i., Preface, § 45.

[3] Mansi, vol. xii. p. 904 *et seq.*; Hinschius, *Decretales Pseudo-Isidorianæ*, etc. (Leipsic 1863).

above his master.' Formidable penalties were denounced against all who might make malicious accusations, or fail to establish any charges made by them when brought to trial. A bishop, against whom a charge might be made, might either claim to have the question transferred to the Pope in the first instance, or appeal to the Pope (whose decision was to be final) after judgment by the metropolitan. No charge could be made by a priest against a bishop, or by a deacon against a priest, or by any one in any inferior order against a clerk of an order above him. No lay testimony was to be received against a clerk; and many witnesses (graduated according to the different ranks of clerks, but in the case of a bishop not less than seventy-two, in that of a cardinal priest sixty-four, in that of a cardinal deacon twenty-six) were required to justify an adverse sentence.

According to a title (perhaps not in the original publication, but early prefixed to it),[1] these were represented as 'Articles (*Capitula*) collected from various authorities (*sparsim collecta*)—from Greek and Latin Canons, Roman Synods, and decrees of Roman Pontiffs and Princes; and delivered at Rome, by the Blessed Pope Hadrian, on the thirteenth day before the Kalends of October, Indiction 9, to Ingilram, Bishop of the City of Metz, when he was there upon his own business'—no year being mentioned.

Some of them were taken (more or less exactly) from the work of Benedict the Levite,[2] and cannot be earlier than that work. That they were delivered to Archbishop Ingilram by Pope Adrian I. is incredible. There was nothing resembling them in the code delivered by that Pope to Charlemagne, and afterwards (with the interpola-

[1] Hinschius, *Commentatio*, etc. (*ubi supra*, p. cxvii. *et seq.*).
[2] *Ibid.* (*ubi supra*, cap. 3, 4).

tion only of the pretended canons of Sylvester) referred to by Leo IV. as containing the rules of judgment accepted by the Roman See. The theory of those who have regarded the ascription of them to Ingilram as genuine, is not that they were known at Rome, but that he published them to justify himself against certain imputations, and 'that they were almost all taken from the false decretals, which then began to appear;' this being 'the first trace of the use of those fabrications.'[1] Among them are passages from the spurious Epistles of Clement to the Apostle St. James, and of Popes Anacletus, Eleutherius, Victor, Cornelius, Lucius, Sixtus II., and Marcellinus; as well as canons of the spurious synod under Sylvester, which are also found in the fifth book of Benedict.

There are strong grounds for the belief of Hinschius,[2] that Ingilram was not the real author of that publication; that it was not compiled until after his time, and that it may not improbably have been the work of the same man who produced the larger Collection of false decretals, of which it was the precursor.

5. That Collection was fabricated and published between the years A.D. 847 and 853. It is said to have been introduced from Spain by Riculf, Archbishop of Mentz; and it is quoted by Hincmar (not without some apparent doubt of its authority) as passing under the name of St. Isidore, Archbishop of Seville, A.D. 601-636.[3]

The title (as given in Hinschius's edition)[4] is 'A Breviary of the Canons of the Apostles and first Bishops of the Church from Clement to St. Silvester, and of the various

[1] Moreri, *Dictionnaire*, etc., under the name 'Ingelram.'
[2] *Commentatio*, etc. (*ubi supra*, cap. 4).
[3] *Ibid.* (*ubi supra*, pars iv.)
[4] *Decretales Pseudo-Isidorianæ*, etc. (Leipsic 1863).

Councils in their order, whose acts also are collected in this work, their heads being subjoined.'

It contains, first, the (so-called) Apostolic Canons,—genuine, though not of the Apostolic age; and, after these, a series of pretended 'Decretal' Epistles from thirty early Popes, beginning with Clement (the supposed successor of St. Peter) and ending with Melchiades, the immediate predecessor of Sylvester; occupying the whole period from the martyrdom of St. Peter and St. Paul to A.D. 314, and omitting only two of the traditionary Popes of that period, viz. Linus (the second) and Clement II. (the fourth).

After these there are added the famous document called the 'Donation of Constantine,' and some canons of the spurious Roman Council under Pope Sylvester; which are followed by other false decretals of Popes Julius, Liberius, and Damasus, and then by the Oriental and African Canons contained in the Code of Dionysius 'Exiguus,' (with some variations), and afterwards by canons of Gallican Councils, ending with the first Council of Orleans, and Spanish and Portuguese Councils, ending with the second Council of Seville.

Of the forgeries contained in this collection, a sufficient idea may be formed from two examples: the fabulous letter,[1] with which the book opens, of Clement to St. James the brother of our Lord; and the 'Donation of Constantine.'[2]

In the former of these, Clement is made to relate to the Apostle St. James the circumstances of his appointment, by St. Peter, before his martyrdom, to succeed him in the Bishopric of Rome, with the power of binding and loosing, 'so that, as he should decree on earth, it should also be

[1] *Decretales Pseudo-Isidorianæ*, etc. (Leipsic 1863), pp. 30, 42.
[2] *Ibid.*, p. 249.

decreed in heaven; inasmuch as he would bind only that which ought to be bound, and loose only that which ought to be loosed.' Long addresses from St. Peter to Clement himself, to the priests, the deacons, and the laity, are reported as following that commission; and the Apostle is said to have then consecrated him before them all by imposition of hands, and to have compelled him (overwhelmed with diffidence) to sit in his own chair. Then Clement repeats, in the most formal and scientific terms of post-Nicene theology, the doctrine which he has received from St. Peter; and informs St. James that he has ordained bishops, and will ordain others, for Gaul, Spain, Italy, and Germany. The rules according to which patriarchs and archbishops are to be appointed, according to the relative secular importance of cities (which have been already mentioned) are then laid down; and St. Peter is quoted as saying that bishops are to have rule in the Apostles' place, and priests in place of the other disciples; that no accusation should be received against bishops and priests except from persons of good report and of equal dignity; that laymen should not be permitted to make such charges; that all should be subject to Clement; that he (St. Peter) forbade secular men to resist spiritual; and that no priest should do anything in any diocese without the bishop's permission.

The decretal letters of the other early Popes are conceived in the same spirit.

The 'Donation of Constantine' begins with a long profession of faith, made by that Emperor upon his conversion and baptism, and an exhortation by him to all nations to hold the same faith; after which, an account of his conversion is given. Afflicted with leprosy, and persecuting

the Christians, he had compelled Pope Sylvester to fly from Rome, and to take refuge in a cavern in Mount Soracte. The Apostles St. Peter and St. Paul (at once recognised by the Pope, from the Emperor's description of their forms and lineaments) then appeared to Constantine in a vision, and revealed to him the truth of Christianity, and that Sylvester (for whom they commanded him to send) was 'Universal Pope.' At his request the Pope came, cured him of his leprosy, instructed and baptized him. I translate the material parts of the Act of Donation, said to have been made four days afterwards, and dated at Rome the 31st March, 'in the Fourth Consulship of our Lord Flavius Constantinus Augustus':

'We, together with all our Rulers of provinces (*satrapis*), and the whole Senate, and all our Nobility, and all the Roman people, have judged it expedient, that as the Blessed Peter appears to be appointed Vicar of the Son of God on earth, so the Pontiffs also, who stand in the place of the same Prince of the Apostles, should obtain by grant from us, and from our Empire, a princely power, exceeding that which the earthly graciousness of our Imperial Serenity seems to have; choosing the same Prince of the Apostles, and his successors, to be our sure advocates with God. And, as our earthly Imperial Power, so have we decreed that the Holy Roman Church should be reverently honoured, and that the most Holy See of the Blessed Peter should be gloriously exalted above our Empire and earthly throne; giving to it the power, and glorious dignity and strength, and honourable estate, which belong to Empire. And we decree and ordain that it shall hold the Primacy, as well over the four Principal Sees of Alexandria, Antioch, Jerusalem, and Constantinople, as over all other Churches of God throughout the world; and that the Pontiff for the time being of the Holy Roman Church shall be higher than, and Prince over, all the priests of the whole world; and that according to his judgment all matters relating to the worship of God, and to the establishment of the Christian Faith, shall be settled.'

Then, after mentioning large endowments, as granted to the see of Rome in Judea, Greece, Asia, Thrace, Africa, Italy, and different islands, it proceeds:

'And we do presently deliver up to the Blessed Silvester, our Father, and Pope of the Universal City of Rome, and to all the Pontiffs his successors, who shall sit in the chair of the Blessed Peter, even to the end of the world, the Lateran Palace of our Empire, and with it the diadem or crown of our head, and the cap, the Imperial collar, the purple mantle, the scarlet tunic, and all other our Imperial robes; together with the rank and dignity of our presidents of the Imperial horsemen, and the Imperial Sceptres, and all signs and badges and Imperial ornaments of every kind, and the whole pomp of Imperial pre-eminence, and glory of our power.'

Then follow grants of privileges to the Roman clergy of all orders. They are to have senatorial rank, to be made 'patricians,' and 'consuls,' and adorned with the other dignities of the empire; to wear military decorations; to ride on horses, with white linen reins and trappings; and to wear, like senators, sandals covered with white linen. The Pope's diadem is to be of the purest gold and precious stones. The document proceeds:

'But since the most Blessed Pope has not endured at all to use the golden crown above the crown of his clerical tonsure, which he wears in honour of the Blessed Peter, We have, with our own hands, placed on his most Holy Head a cap of dazzling whiteness, symbolising the Resurrection of the Lord; and holding the bridle of his horse for reverence of the Blessed Peter, have ourselves performed for him the office of groom; appointing that, in imitation of our Imperial state, his successors shall have the sole privilege of using the same cap in their Processions.—Wherefore, that the Pontifical Eminence may not be degraded, but may be adorned with more glory and power than the dignity of the earthly Empire, lo! we do give up and relinquish to our aforesaid most blessed Pontiff, Silvester, the Universal Pope, both our Palace (already men-

tioned) and the City of Rome, and all our provinces, places, and Cities of Italy and the regions of the West; and we decree, by this our "Dival" and "Pragmatic" Constitution, that they shall be at the disposal of him and his successors; and we grant them to remain for ever in right to the Holy Roman Church. And for this reason, we have thought it convenient to transfer our Empire and the power of our Kingdom to the regions of the East, and that a city should be built, after our own name, on a fair site in the Byzantine province and our Empire there established; because it is not right that any earthly Emperor should have power where the Heavenly Emperor has established the Prince of Priests, and the Head of the Christian Religion.'

The Emperor then declares his will, that all the powers, privileges, and rights thus granted shall endure in all their fulness, without disturbance, until the end of the world; and he adjures his successors, and all his lords, ministers, senate, and people, and all who at any future time, in any part of the globe, may be subject to any of his successors, to preserve them inviolate under the penalty of his curse:

'But if any one (which we do not believe) shall be found in this matter a scorner or despiser, let him lie under the sentence of eternal condemnation, and have for his adversaries, in this and in the future life, the saints of God, the Princes of the Apostles, Peter and Paul; and let him perish in the fire of the lowest hell with the Devil and all the wicked. And so, confirming with our own hands the scroll of this our Imperial decree, we have placed it over the venerable body of Peter, the Prince of the Apostles.'

6. The 'Isidorian wares,'[1] of which these are, perhaps, the most remarkable specimens, found in those times a ready market and little or no criticism. They were largely relied on by the canonists of the tenth and eleventh centuries—

[1] See Van Espen, *Jus Univ. Canon.*, pars ii. sect. 4, tit. i. cap. 6, § 7.

Regino, Abbot of Prüm (who died A.D. 915); Burchard, Bishop of Worms (A.D. 1008-1026); and Ivo, Bishop of Chartres (A.D. 1091-1116).

7. The work of Gratian, which (under the name of *Decretum*)[1] enters into and constitutes the first part of the modern Body of Roman Canon Law, is a systematic digest of the most important parts of the works of his predecessors, with further collections of his own. The title by which he himself called it was *A Concordance of Discordant Canons.* He was a Benedictine monk of Bologna, and his compilation is full of those errors into which a compiler, who either did not or could not verify his authorities, was liable to fall. It contains numerous extracts from the false decretals of the early Popes,[2] including the letter of Clement[3] to St. James of which I have given an account. All that part of Constantine's pretended Act of Donation[4] which I have translated or abridged is contained in it. It was published about A.D. 1151, and is said to have been approved by Pope Eugenius III., who died in A.D. 1153.[5] It soon became the received text-book of Canon Law. This may

[1] The *Decretum* of Gratian constitutes the whole first volume of the *Corpus Juris Canonici* (Richter's ed., Leipsic 1839).

[2] In the first 483 alone, out of 1249 pages of the *Decretum* (Richter's ed.) there are 9 citations from Clement, 24 from Anacletus, 4 from Evaristus, 4 from Alexander I., 1 from Sixtus I., 2 from Telesphorus, 2 from Vigilius, 3 from Pius I., 3 from Anicetus, 3 from Eleutherius, 2 from Victor I., 9 from Zephyrinus, 10 from Calixtus I., 1 from Pontianus, 1 from Anterius, 15 from Fabianus, 4 from Cornelius, 4 from Lucius, 4 from Caius, 4 from Marcellus, 1 from Marcellinus, 8 from Eusebius, 1 from Melchiades, 7 from the Acts of Sylvester, 6 from Julius I., 8 from Damasus.

[3] Dist. 80, cap. 2; dist. 93, cap. 1, 6, 7; causa ii., quæst. vii., cap. 8, 9; causa vi., quæst. i., cap. 5, etc.

[4] Dist. 96, cap. 14.

[5] See Moreri, *Dictionnaire*, etc., *in nom.* 'Gratien.'

have been partly due to its systematic form, and partly to the reputation of the law school of Bologna; but the chief cause (according to Van Espen)[1] was that 'Gratian, in this work, not only repeated those fictions of the false Isidore, and of the sources from which he drew, which were directed to the aggrandisement of the authority of the Popes, but added much more of the same tendency, beyond what even the false Isidore could venture to write.' Pope Innocent III. was in his day reputed a great canonist; but Van Espen[2] says, that he regarded the *Decretum* as the purest fountain of Canon Law, and relied upon it in his decretals and decisions; that he was contented to take what he found there, indiscriminately and without hesitation; never inquiring into its genuineness or spuriousness, or whether it presented its authorities in a pure or in a garbled form.

8. The rest of the modern Roman Canon Law, which in the *Corpus Juris Canonici* follows the *Decretum*, consists of successive digests of canons of councils and decretals of Popes later than Gratian's time. It ends with the decrees of the Council of Trent, and the bulls of Pope Pius IV. confirming them.

[1] *Works*, vol. iii. p. 493 *et seqq.* (*Comment. in Decretum Gratiani*).
[2] *Ibid.*, vol. iv. p. 69.

# ANCIENT FACTS AND FICTIONS

## PART I.—CONTINENTAL

# CHAPTER I

## CHURCH REVENUES AND RULES OF DISTRIBUTION

### § 1. *Church Revenues the Patrimony of the Poor.*

NOT tithes in particular, but all Church property, of every kind, was from early times, and down even to the fourteenth century, described as 'the patrimony of the poor.'[1] The poor were always, and always must be, in an especial degree, objects of the Christian ministry. To them 'the Gospel' was to be 'preached.' The provision needful for the different orders of a settled ministry, and for churches in which they might meet for prayer and sacraments, was at least as beneficial to them as anything which might be specially devoted to the relief of their temporal wants. The relief, however, of the temporal as well as the spiritual wants of the destitute and the sick, the aged and afflicted, of strangers and foreigners, of prisoners and captives, was also, from the beginning, part of the office and work of the Church. The words of the Apostle:[2] 'Let brotherly love continue; be not forgetful to entertain strangers: remember them that are in bonds, as bound with them, and them which suffer adversity, as being yourselves also in the body,' —contain the germ of all later ecclesiastical ordinances

[1] Van Espen, *Jus Univ. Canon.*, pars ii. sect. 4, tit. i., cap. 3, §§ 1-16.
[2] Hebrews xiii. 1-3.

and practice on this subject. There is not a hospital or charitable institution in Christendom which is not, directly or indirectly, the fruit and a monument of the preaching of the Gospel.

This was the principle which regulated the use and application of Church revenues when those revenues were brought into one treasury and were subject to one general diocesan administration. The ancient customs and laws on that subject were as much applicable to offerings made at the altars of churches, and revenues arising from landed or other estates given to the Church, as to anything else. Of tithes, there is no mention at all in the Western Church until the beginning of the fifth century; none, indeed, in this particular connection, until much later.

### § 2. *Episcopal Authority.*

In the early diocesan administration everything depended upon the bishop. That was the rule laid down in the canons called 'apostolical,'[1] and in those of Antioch;[2] the former giving the bishop full power of disposition over all the goods of the Church, 'for the benefit of the poor;' the latter, according to the bishop's judgment, for himself and others, as the wants of each might require. Those Eastern canons were adopted into the original[3] ecclesiastical law of the Roman Church and of the Western Churches generally. The first Council of Orleans,[4]

[1] Canons 35, 37. [2] Canons 24, 25.

[3] *Codex Canonum Ecclesiasticorum Dionysii Exigui* (Paris, ed. 1628). It contains 50 'apostolical' canons, 20 Nicene, 24 Ancyran, 14 Neo-Cæsarean, 29 Gangrian, 25 of Antioch, 59 Laodicean, 3 Constantinopolitan, 9 of Chalcedon, 21 Sardican, 33 of Carthage, and 105 other African canons. [4] Mansi, *Concil.*, vol. viii. p. 347.

assembled in A.D. 511 under the first Christian King of the Franks, laid it down as an ordinance (which they followed) of 'the more ancient canons,' that the general property of the Church was to be in the bishop's power.' The same thing was often[1] repeated in the legislation, civil as well as ecclesiastical, of the eighth and ninth centuries; and, as late as the eleventh century, Pope Gregory the Seventh[2] (as to tithes) endeavoured to restore that power to bishops.

Even as to the local endowments of 'oratories' on private men's estates, the bishops (for a long time successfully) claimed the same power. 'There are many' (said a canon[3] of the third Council of Toledo, A.D. 589, repeated[4] from time to time in later Acts both of Spanish and of German Councils), 'who, against the canonical rule, seek to get their own churches consecrated upon such terms as to withdraw their endowment (*dotem*) from the bishop's power of disposition. This we disapprove in the past, and for the future forbid. Let all things be done according to the ancient rule, under the bishop's power and control.' The first Council of Châlons[5] (A.D. 649), after taking notice that some powerful laymen opposed the exercise of the episcopal authority as to oratories built by them on their estates, and their endowments (*facultates ibidem conlatas*),

[1] See, *e.g.*, Charlemagne's capitulars of Frankfort, A.D. 794, of A.D. 813, and of uncertain date (Baluze, vol. i., *Cap. Reg. Franc.*, pp. 270, 503, 527); also canons of Arles (A.D. 813), of Mentz (A.D. 813 and 841), and of Pavia (A.D. 850 and 855)—Mansi, *Concil.*, vol. xiv. p. 60, etc., and pp. 905, 936; vol. xv. p. 18.

[2] *Decretum*, pars ii., causa xvi., quæst. i., cap. 1.

[3] Mansi, *Concil.*, vol. ix. p. 998.

[4] *Ibid.*, vol. xi. p. 25; vol. xv. p. 870; vol. xviii. p. 62. Also Baluze, *Capit. Reg. Franc.*, vol. i. p. 527; vol. ii. p. 352. And *Decretum*, pars ii., causa x., quæst. i., cap. 2-8.

[5] Mansi, *Concil.*, vol. x. p. 119.

decreed that the bishops, in all such cases, ought to have power over the endowments as well as over the clergy.

### § 3. *Local Customs.*

In the application of these principles a variety of usages grew up in different Churches. Van Espen[1] says that the Apostolic practice of supplying out of a common fund all the wants of the Church, without any definite rule of distribution, prevailed for at least four centuries; and that all definite rules were of later date. Augustin of Canterbury (as to a question of ritual) asked Pope Gregory the Great how the variety in the customs of Churches was to be reconciled with the unity of the faith. That wise man,—the same who reproved[2] a Patriarch of Alexandria for calling him 'Universal Pope,'—answered:[3]

'You are familiar with the custom of the Roman Church, in which you were brought up. But my judgment is, that you ought to choose whatever is most likely to be pleasing to Almighty God, whether you find it in the Roman, or in the Gallican, or in any other Church; introducing into your rules for the English Church, while yet new in the faith, the best things which you may be able to collect from many Churches. Things are not to be loved for the sake of places, but places for the good which is to be found in them.'

A local liberty, acknowledged as to ritual, could not be denied as to temporalities. And, accordingly, the authority of local custom, in the administration of Church revenues, was recognised by the third Council of Orleans[4] (A.D. 568)—which made a distinction between the churches of

[1] *Jus Univ. Canon.*, pars ii., sect. 4, tit. i., cap. 6, §§ 1-5.

[2] Gregory's Epistles, lib. i., cap. 36; and see *Decretum*, pars i., dist. 99, cap. 8.

[3] Bede's *Hist.*, lib. i., cap. 27. [4] Mansi, *Concil.*, vol. ix. p. 13.

cathedral cities, where the bishop was to have full power over all offerings, etc., and those of towns and villages elsewhere in the diocese; in which the custom of each place was to be observed.[1] And, by a capitular of Louis the Simple[2] (A.D. 819) relating to tithes, the imperial commissioners—civil officers—were instructed to see that tithes were paid by every one, 'according to the ascertained custom or usage.'[3]

### § 4. *The Roman rule of Quadripartite Division.*

The Roman custom, from at least the time of Pope Gelasius (A.D. 501), was to divide the general diocesan revenues into four portions—one for the bishop; one to be distributed by him among his clergy, according to their respective degrees and merits; one for the poor and strangers (*peregrinis*); one for the fabrics of churches. In a decretal letter to the 'bishops of Dardania,' Pope Gelasius[4] ordered that every bishop should be charged, on his consecration, so to divide all the Church revenues. In two other decretal Epistles,[5] addressed to officers[6] of the Church of Volterra (in which abuses requiring correction had occurred), the same Pope directed that the bishop should associate with those officers a third, as his own special representative; and that the three should bring to him the full amount of all rents and payments from all the landed estates (*prædia*)

[1] '*De facultatibus vero parochiarum vel basilicarum in pagis civitatum constitutis, singulorum locorum consuetudo servetur.*'

[2] Baluze, vol. i. p. 620.

[3] *Sicut mos vel sacra consuetudo esse dignoscitur.*

[4] Mansi, *Concil.*, vol. viii. p. 12: '*Ut de reditu ecclesiæ vel oblationibus fidelium quatuor fiant portiones,*' etc.

[5] *Ibid.*, pp. 114, 115.

[6] The Archdeacon and 'Oeconomus.'

of the Church, both urban and rural; which the bishop, after deduction of expenses, and reserving a fund for contingencies, was to divide into the same four portions. The Church officers were to be cognisant of the distribution of the portion allotted to the poor, and, under the bishop's direction, were to make the necessary expenditure on the church fabrics. The portion allotted to the clergy was to be distributed according to the sole discretion of the bishop himself.

These decretals of Gelasius were often, in countries where the Roman rule of fourfold division was followed, referred to as the authority for it.[1] It was mentioned,[2] as the custom (*mos*) of the Apostolic See, with respect to every sort of Church revenue (*de omni stipendio quod accedit*), in the answer of Pope Gregory the Great to the first of Augustin's questions; and he enforced it, on several occasions,[3] in Italy and Sicily. Some of the bishops of Sicily had sought to confine it to ancient revenues (*antiquorum redituum*) of the Church, and had dealt with the fruits of later acquisitions on a different footing. But Gregory[4] refused to allow that distinction. He did not, however, consider the same rule applicable to the condition of the nascent Anglo-Saxon Church, advising Augustin to follow the primitive practice of the Apostolic Church.

[1] See, *e.g.*, Mansi, *Concil.*, vol. xiii. p. 428; vol. xviii. p. 139. A pretended decree of the (fictitious) Roman Council under Pope Sylvester (A.D. 324), enjoining the same division of all Church revenues (*de redititibus ecclesiæ*), has been sometimes alleged as an earlier authority. As to this, see Van Espen, *Jus Univ. Canon.*, pars ii., sect. 4, tit. i., cap. 6, §§ 6, 7; also *Jus Nov. Canon.* (ed. 1777), pars ii., p. 470.

[2] Bede, lib. i., cap. 27.

[3] See his *Works* (Bened. ed. of St. Maur, 1705), tom. ii., pp. 691, 737, 774, 899, 1249.

[4] *Ibid.*, p. 691 (Letter to Bishop of Syracuse).

### § 5. *Apportionment not numerically equal.*

Neither the Roman, nor any other mode of division ever used in the Church, contemplated (generally) an apportionment of the divisible funds into so many shares, numerically or by valuation equal. 'An arithmetical or equal proportionate division,' says Van Espen,[1] 'was neither appointed nor made; it varied according to the customs and circumstances of different places, which suggested the expenditure, now of a larger portion upon the poor, and at another time upon the clergy, according to the numbers and wants of the one or the other class. . . . It is clear that, out of the revenues of the Church, the clergy were paid and supported, the sustenance of the poor provided for, and the sacred buildings repaired, by a reasonable, and not by an arithmetical distribution.'

### § 6. *Quadripartite Division beyond Italy.*

It is said, by the same canonist, that the custom of quadripartite division was not received and in express terms established[2] in many places out of Italy; though the general principle of employing the ecclesiastical revenues for the purposes contemplated in that division was universally recognised. And he cited[3] (apparently without dissent) a statement by one of the earlier editors of the works of Gregory the Great, that the quadripartite division prevailed 'in few, if any, parts of France.' That statement (which I do

[1] *Jus Univ. Canon.*, pars ii., sect. 4, tit. 1, cap. 6, §§ 10, 14.

[2] '*Accepta vel stabilita verbis expressis*' (Van Espen, *Jus Univ. Canon.*, *ubi supra*, § 15).

[3] *Ibid.*

not find adopted or repeated by the Benedictine editors of A.D. 1705[1]) cannot be accepted as correct. The quadripartite division, according to the Roman rule, prevailed in the ninth century in both the great arch-dioceses of Paris and Rheims, and also in the diocese of Soissons; as clearly appears from the Acts of the sixth Council of Paris[2] (A.D. 829), from the capitulars of Archbishop Hincmar of Rheims,[3] addressed to the priests of his diocese in A.D. 858. and from the constitutions of Riculf, Bishop of Soissons[4] (A.D. 889). Nor is there any reason to suppose that it was confined to those dioceses. In Germany, also, it largely prevailed; and was restored by bishops and councils in some places where it had been departed from. Thus, at the Council of Salzburg[5] (A.D. 807) the question arose, and was determined from 'the ancient canons' in favour of the quadripartite division; and certain abbots, then present, who had received tithes without accounting for the episcopal one-fourth share, made restitution to their respective bishops. At Basle, in A.D. 821, the bishop[6] (named Ahyto) considering himself entitled under a canon of the fourth

[1] The St. Maur edition of Gregory the Great's works is, by universal consent, better than any which preceded it.

[2] Mansi, *Concil.*, vol. xiv. p. 550 (lib. i., cap. 15, of the Acts of the Council, referring to '*Gelasius in decretalibus*, cap. 27;' and relating to Church revenues, '*ecclesiasticæ res*' and '*facultates*' generally).

[3] Mansi, *Concil.*, vol. xv. p. 480 (pars ii., art. 16, of Hincmar's capitulars): '*juxta institutionem canonicam*,' as to tithes in particular.

[4] Mansi, *Concil.*, vol. xviii. p. 85 (art. 11): '*canonica auctoritate*,' as to all the '*facultates ecclesiæ*.' The quadripartite division is also directed in some (though not the best or most) of the manuscripts of the Acts of the Council of Thionville, A.D. 803 (Mansi, vol. xiii. p. 428).

[5] Mansi, *Concil.*, vol. xiv. p. 13. (The question there was as to tithes.)

[6] *Ibid.*, p. 390. (As to tithes: '*Nos vero hac potestate uti nolumus, sed tantum quartam partem, juxta constitutiones Romanorum Pontificum, et observantiam sanctæ Romanæ ecclesiæ, habere volumus.*')

Council of Toledo to one-third, elected, in preference, to take a fourth part only, 'according to the ordinances of the Roman pontiffs, and the usage of the Holy Roman Church.' The Council of Mentz,[1] held (A.D. 841) under Archbishop Rabanus Maurus, decreed 'that the tithes given to the several churches be dispensed by the priests, according to the bishop's judgment, for the use of the Church and the poor;' and 'that both of the rents of land and of the offerings of the faithful, four portions be made, as the means of each church may allow, according to what was long since reasonably ordained: one part for the bishop, another for the clergy, another for the poor, and the fourth to be laid out as the bishop may appoint on the fabrics of the Church.'

The Councils of Worms[2] (A.D. 868), and of Tribur[3] and Martzen[4] (both A.D. 895), and Walafrid Strabo,[5] much of whose life was spent in the monastery of Fulda, and who became Abbot of Reichenau in the diocese of Constance (writing in the earlier half of the ninth century), all laid down the same rule of quadripartite division, as canonically binding on their several churches. Every royal and imperial capitular which speaks of any division at all, whether Transalpine or for Lombardy, and every canon or law mentioning it in the collections of Ansegisus and of

[1] Mansi, *Concil.*, vol. xiv. p. 906 (art. 10).

[2] Mansi, *Concil.*, vol. xv. p. 871 (art. 7): '*De reditu ecclesiæ et de oblatione fidelium*,' etc.; in the exact words of Gelasius, though not naming him, and not mentioning tithes.

[3] Mansi, *Concil.*, vol. xviii. p. 139. (Art. 13, as to tithes.)

[4] *Ibid.*, p. 169. (Art. 10, as to tithes.)

[5] Cap. 27: '*De decimis dandis*' (Migne's ed., 1852, p. 961). He lays down the rule of division, not as to tithes only, but more generally: '*Quatuor enim partes juxta canones fieri de fidelium oblationibus debent*,' etc.

Benedict the Levite,[1] relates to the quadripartite division only.

### § 7. *Tripartite Division.*

For the statement of Bishop Kennett[2] (followed by Blackstone[3] and others) that 'when sees began to be endowed with lands, etc., the bishops, to encourage a quicker foundation of churches, did tacitly recede from their quarter part, and were afterwards by canons forbid to demand it if they could live without it,' there does not seem to be any good foundation. The customs, both of quadripartite and of other modes of division, were local; I find no trace of a transition anywhere from the quadripartite to a tripartite division, or of canons 'forbidding bishops to demand' their share. It was, indeed, suggested by some bishops[4] and councils,[5] that the case might happen of a bishop who did not need his share being willing to forego it; but of any compulsion to do so, or of any such renunciation by a bishop for his successors as well as himself, I have found no example.

There is much more ground for saying that direct proofs of the prevalence, either in France or elsewhere, of a tripartite or any other mode of division different from the Roman,

[1] Baluze, *Capit.*, vol. i. p. 691 *et seq.* As to Benedict, see Introduction, *ante*, p. 10.

[2] *Case of Impropriations* (1704), p. 15.

[3] *Comm.*, vol. i. pp. 384, 385 (book i., cap. 11).

[4] Bishop Riculf of Soissons (A.D. 889): '*Scire debetis, quia facultates ecclesiæ in quatuor partes canonica auctoritate sunt divisæ; ex quibus una est, si voluerit, episcopi; alia ad luminaria,*' etc. (Mansi, *Concil.*, vol. xviii. p. 85).

[5] Toledo xvi. (A.D. 693): '*Si eas* (sc. *tertias, quas antiqui canones de parochiis suis habendas episcopis censuerunt*) *maluerint reddere*' (Mansi, *Concil.*, vol. xii. p. 72).

are few and scanty, than for affirming such a proposition as to the quadripartite division in Continental Churches west and north of the Alps. I will first speak of the usages of the Spanish Peninsula, of which the influence extended to parts of France bordering on the Mediterranean, and was even felt north-eastward (as we have seen in Bishop Ahyto's case) as far as Basle.

In Spain there is evidence, in the sixth and seventh centuries, of a particular form of tripartite division; not, however, of one from which the bishop was excluded. On the contrary, the bishop took one-third share, subject to the repair of those churches to which a fourth would have been assigned by the Roman rule; and this would seem, from Bishop Ahyto's case, to have been more profitable to him than if he had taken one-fourth. This mode of division was established by the Council of Tarragona[1] (A.D. 516), which threw upon the bishop the burden of those repairs, expressly on the ground of his canonical right to one-third of all church revenues. The fourth[2] and ninth[3] Councils of Toledo (A.D. 633 and 657) recognised that right, but were silent as to the burden; the sixteenth[4] Council of Toledo (A.D. 693) reinforced the obligation which that of Tarragona had imposed, giving the bishop an option to relieve himself from it at the expense of the worshippers in the churches, if he waived his one-third; which, however, he was to be at all times free to take, when repairs were not necessary.

[1] Mansi, vol. viii. p. 543. (This, and the other Spanish and Portuguese canons mentioned, relate to church revenues generally, and not to tithes in particular.)

[2] *Ibid.*, vol. x. p. 627. (This council and the next gave the bishop one-third both of oblations and of the rents and profits of lands.)

[3] *Ibid.*, vol. xi. p. 26.

[4] *Ibid.*, vol. xii. p. 72.

In Portugal the first Council of Braga[1] (A.D. 567) laid down the rule that the ecclesiastical revenues should be divided into three *equal* portions—one for the bishop, one for the clergy, and one for church repairs and lights. The second Council of the same place[2] (A.D. 610) forbade the bishop, on his visitations, to take a third of the offerings made by the people in 'parish churches' (*ex quacunque oblatione populi in ecclesiis parochialibus*); appointing a third of those offerings to be given to the repair fund, and (apparently) leaving the rest to the clergy of those churches. And the Council of Merida[3] (A.D. 666) directed all the offerings of the faithful *in the churches of cathedral cities* to be divided into three equal parts; one for the bishop, one for the priests and deacons of those city churches, and one for the sub-deacons and other clergy in minor orders; while, in country churches (here also called parochial),[4] two-thirds were to be divided among the clergy of different orders, as in cathedral cities; but the other third was to go, not to the bishop, but for repairs. In this Portuguese mode of division no share was specially assigned for the poor.

Passing now to France, the Benedictine editors of Gregory the Great's Works (1705) referred[5] to the first

[1] Mansi, vol. ix. p. 773. [2] *Ibid.*, xi. 835. [3] *Ibid.*, p. 83.

[4] *Parochitanæ ecclesiæ*, having *parochitanos presbyteros*. These were, apparently, collegiate or conventual churches, having each a *familia*, which was a nursery for clerks; and having deacons, as well as priests, and lower clerks, among whom the division was to be made. The Council spoke of the bishop as entitled, under the former canons, to a third part of the revenues of this class of churches also—which it took away, thinking him otherwise amply endowed: '*Priscis quippe canonibus erat decretum, ut episcopus de parochitanis ecclesiis tertiam sequeretur; cui sua plenissime sufficere possunt.*'

[5] Tom. ii., p. 691 (note to Gregory's Epistle to Bishop of Syracuse).

Council of Orleans[1] (A.D. 511), as having laid down the Roman rule for Gallican Churches. This is not accurate, unless the Acts of that Council, as printed in the great collections of Mansi and his predecessors, are corrupt. Several of its canons relate to the distribution of different kinds of church revenues; and they are not easy to reconcile with each other. They laid down, first, a special rule, not for a tripartite division, but for the application, generally, to 'the repair of churches, the sustenance of priests and the poor, or the redemption of captives,' of the fruits and profits of certain royal gifts (given, doubtless, by Clovis after his conversion), of lands privileged from secular services, and of any similar gifts which might at any future time be made to the Church. Then, as to offerings at the altars of churches, another canon assigned *half* of them to the bishop, and the other half for distribution among the clergy: adding, that *prædia* of every kind were always to remain in the bishop's power. A third canon said that all the offerings of the faithful to the diocese, consisting of lands, vineyards, or other private property, should be in the bishop's power; and (which seems inconsistent with what had gone before) that a *third* part of what was offered at the altar should go to the bishop. And, lastly, the bishop was enjoined, 'as far as possible,' to give food and clothing to the poor and infirm who were incapable of manual labour.

These were special and intricate provisions. There was no quadripartite division. There was either a tripartite or a bipartite division of offerings, from which the bishop was *not* excluded; and there was a general appropriation of the revenues arising from *royal* gifts of land to the other

[1] Mansi, vol. viii. p. 347.

usual purposes, in which the bishop was to take no share. How far, and how long, these canons of Orleans were acted upon, may be doubted. By a letter of Abbo,[1] the celebrated Abbot of Fleury, who at the close of the tenth century defended monastic claims to tithes against his own diocesan (of Orleans) and other bishops, it appears, that the bishops of Orleans and other neighbouring parts of France were then in the habit of claiming, and taking for themselves, one-third of the general ecclesiastical revenues; and that, in Abbo's view, their right was to one-fourth, according to the Roman rule.

No Acts of any ancient Gallican Councils, either earlier or later than this first of Orleans—no royal or imperial capitular or law—can be cited in support of the proposition advanced by some respectable writers,[2] that a tripartite division, either of all ecclesiastical revenues, or of tithes in particular, was at any time the general custom of France.[3] The document, to which Ducange refers for that purpose (known as the *Capitulare Episcoporum*),[4] is interesting, and

[1] Gallandii *Bibliotheca Veterum Patrum* (Venice 1781), tom. xiv. p. 151; Bouquet, *Recueil des Histoires*, vol. x. p. 440.

[2] Ducange (Gloss in v. 'Dismes'): '*Tantum moneo, Decimas Ecclesiæ in tres partes divisas*,' etc.; referring to Charlemagne's capitular of A.D. 779, which says nothing about any division; to the *Capitulare Episcoporum;* and to De Lauriere's *Glossarium Juris Gallici*, v. 'Dismes,' where, also, there is nothing in point.

[3] The fourth article of the Ordinances of Aix-la-Chapelle, of A.D. 816 (see *post*, p. 85), provided for a division different from either the quadripartite or the tripartite; giving a larger share to the poor than either one-fourth or one-third, and no share to the bishop. But this division was to take place only as to gifts to the Church, later than A.D. 813, of which no appropriation might be made by the donors.

[4] Baluze, *Capit.*, vol. i. p. 357; Mansi (from Baluze), vol. xiii. p. 1069. See both texts of this document, from the Metz and Andain MSS., in Appendix A.

may be accepted as evidence that in some districts of France and the Low Countries (including, probably, Brabant, Luxemburg, the Ardennes, and parts of the adjoining provinces of Lorraine to the south-east, and Artois and Picardy to the west), tithes were in the ninth century divided into three portions;[1] one for the Church, one for the poor, and one for the priests. But it has been already seen that, to the immediate south of that region, the limits of that custom were so circumscribed that it did not extend to Soissons or Rheims; the quadripartite division, which was the rule in those dioceses, prevailed in the metropolitan diocese of Paris also; and at Orleans, in the tenth century, Abbo knew nothing of the *Capitulare Episcoporum*, or of any practice corresponding with its article as to tithes.

As a document, identical for this purpose (though not so entitled) with the *Capitulare Episcoporum*, will elsewhere in this work be shown to have been the true source of every passage in certain Anglo-Saxon compilations of the tenth and eleventh centuries which mentions a tripartite division of tithes, it seems desirable to collect such information as is accessible about it.

## § 8. *The 'Capitulare Episcoporum.'*

This title is in one only of the two manuscripts of the document in question, which were extant (I am not aware that any others were then, or are now, known) in the seventeenth century—that preserved at Metz, in the library of the monastery of St. Vincent, and first pub-

[1] One of its articles directed such a division to be made '*according to canonical authority, before witnesses.*' See *post*, p. 228.

lished by Sirmondi in A.D. 1629, in his *Gallican Councils*;[1] from which work it was copied by Baluze,[2] in his *Capitulars of the Frank Kings*. It is from those publications that it is best known. The other manuscript was in the library of the monastery of St. Hubert, at Andain in the Ardennes; and was published by Martene and Durand[3] in A.D. 1733, in their *Amplissima Collectio* of ancient ecclesiastical documents; being considered by them to be then 800 years old,[4] and to belong to the earlier part of the tenth century. The Metz manuscript was, probably, not less ancient; it is described as one of very high quality. The originals, from which both were copied, must have been a century or more older.

A singular heading—singular, because it is difficult for a man of ordinary intelligence to find all that follows in Holy Writ—is common to both manuscripts:

'*These are the articles* (*capitula*) *from the writings of the Holy Scriptures, which the chosen priests have thought fit to be kept and observed.*'

There is nothing to show who 'the chosen priests' were, or when, where, or by what authority they were chosen. The Metz title, *The Bishops' Capitular*, implies, not that those who drew up the paper were bishops, but that the authority by which it was promulgated was episcopal, not secular. It did not obtain a place in any Gallican or other Continental code or collection of laws or canons; and the source of those copies of or extracts from it which were made by Anglo-Saxon scholars or divines remained unknown to the learned until after Sirmondi's publication.

[1] *Concilia Antiqua Galliæ*, vol. ii. p. 249. [2] Vol. i. p. 357.
[3] *Veterum Scriptorum et Monumentorum*, etc. *Amplissima Collectio*, Paris 1733, vol. vii. p. 26. [4] *Ibid.*, p. 16.

The first step towards a probable conclusion as to the character and true date of the original document is to ascertain the relative value of the Metz and Andain texts.

The Metz text contains twenty-two articles, of which one (the seventeenth) is absent from the Andain; the rest correspond, with only a few clerical variations. In the Metz text each article has prefixed to it a sub-title; the corresponding articles in the Andain text have no sub-titles. In both texts the thirteen last articles (exclusive of that which is not common to them) occur in the same order; but the order of the eight first is different. Both in the order, and in the omission of the seventeenth (Metz) article, the Anglo-Saxon copyists followed the Andain, and not the Metz text. All the twenty-one articles which occur in both relate to the duties of priests, and were (perhaps for that reason) called 'Sacerdotal Laws' (*jura sacerdotum*) by the Anglo-Saxon copyists. The word 'sacerdos,' 'sacerdotes,' or 'presbiterus,' occurs in every one of them. But it does not occur in the seventeenth article of the Metz text, which is an incongruous interpolation, relative not to any priestly duty, but to the rule of thirty years' prescription in cases of disputed ecclesiastical titles. Nor is this the only indication of the superior claim of the Andain manuscript (clerical errors excepted) to represent the original text. Its seventh and eighth articles, enjoining upon priests the duty of praying 'for the life and empire of the Lord Emperor, and for his sons and daughters,' and for bishops, stand there in an order which the context makes natural and probable. If they had stood first, it is not probable that any later copyist would have degraded them to a lower place. But in the Metz text those two articles are made to precede all the rest; and there is no difficulty in understanding

such a transposition of the original order by ecclesiastical courtiers.

The force of these considerations is not weakened by the fact that, in the Andain manuscript, six other articles (not in the Metz manuscript) are added. They are added in such a manner as to distinguish them from the twenty-one, and to show that they were not derived from the same original source; a sub-title of its own being prefixed to each of them. Their addition is consistent with the date to which the twenty-one 'Sacerdotal Laws' (only one of the added articles referring to the duties of priests) ought probably to be assigned.

What is that date? Sirmondi (and Baluze following him), finding none on the face of the document, beyond the proof (afforded by the injunction to pray for the 'Lord Emperor,' etc.) that it must have been later than the assumption of the imperial dignity by Charlemagne (A.D. 800), placed it—for that reason only—immediately after the capitulars of the first year of his empire.[1] But Selden[2] observed (not indeed upon that document, for he was ignorant of it, but upon the articles which were copied from it, as he found them in the Cottonian manuscript of what are generally called 'Egbert's Excerptions')

[1] Mansi (vol. xiii. p. 1073), after saying, in his note to the reprint from Baluze (p. 1069), '*Ad annum* 802 *viri docti revocant*,' prefixes to a number of documents reprinted by him from Martene and Durand, including those from the Andain MSS. (of which this is one), a preface in these words: '*In calce conciliorum ad ætatem Caroli Magni pertinentium, collocandas duxi sanctiones has ecclesiasticas ejusdem Imperatoris, et aliorum; non quod omnes vel saltem ex iis aliquas sub exitum vitæ Caroli datas censeam, sed eo usus consilio, quod cum incerti sint temporis, ideo illis omnibus canonicis constitutionibus, de quarum epocha certi sumus, subjiciendas duxerim.*'

[2] Selden's *Hist. of Tithes*, ch. 8, § 1, ed. 1618, p. 197.

that it could not be earlier than the 'canonical authority' for the division of tithes 'before witnesses,' to which the article on that subject referred; and he found no such 'canonical authority,' earlier than an imperial capitular really belonging (as will be seen in a later chapter) to A.D. 830.[1] There was, however, an earlier capitular of the last year of Charlemagne's reign (A.D. 813), confirming a canon of the third Council of Tours (one of the several Gallican Councils held by the Emperor's command in that year), which seems more likely to be the 'canonical' authority so referred to. The canon of Tours[2] is in these words: 'The bishops are to have power, in the presence of the priests and deacons, out of the treasure of the church, to take for the family and poor of the same church, according to the institution of the canons, agreeably to their need.' The imperial ordinance[3] confirming it is: 'That every bishop have power, out of the treasure of the church, in the presence of witnesses (*cum testibus*), to take what is needful, according to the canons, for the support of the poor.' This is the first enactment as to witnesses in connection with any distribution of church revenues, which is anywhere to be found; and, taking this to be the 'canonical authority' referred to in the 'Sacerdotal Laws' of the Metz and Andain manuscripts, it follows that they were not earlier than A.D. 813. That conclusion is confirmed, as to the Andain manuscript, by one (that numbered 23) of those six articles, which (in that manuscript only) are added. This is taken, almost *verbatim*, from a canon as to the rights of 'ancient churches,' first enacted in the same year (A.D. 813) by two others of Charlemagne's synods

[1] *Post*, pp. 53, 54. [2] Mansi, vol. xiv. p. 85.
[3] Baluze, *Capit.*, vol. i. p. 503.

(those of Mentz[1] and Arles),[2] and also confirmed by the nineteenth article of the same imperial capitular.[3]

As to the occasion for the work of 'the chosen priests,' and the place or places for which its rules were prepared and published, the mere situation (in the Ardennes and in Lorraine) of the two monasteries in whose libraries it was preserved, might be inconclusive; but it is not without weight. For it was certainly probable that transcripts of such a document would be preserved in those dioceses in which it was, or had been, in force, rather than elsewhere; and those two Benedictine monasteries were places in which (assuming it to have been in force in those parts of the Frank territory) it would have been likely to be found. They were famous among the greatest and most ancient religious houses of the Gallican Church. That of Andain was founded by one of the earliest Bishops of Liege. The remains of St. Hubert, the founder of that see, were solemnly translated to it in A.D. 825, from which time it was called by his name. That of St. Vincent of Metz was founded by Theodoric or Thierry, son of Clovis, and King of Austrasia (of which Metz was the capital), in the sixth century. The situation of those monasteries, however, is not the only clue to the history of the document. In the Andain manuscript it did not stand alone, but was associated with a series of other documents relating to the diocese of Liege, and to the period between A.D. 800 and A.D. 808, which may be reasonably believed to have had some connection with it.

Charlemagne, as Emperor, and under that title (therefore after A.D. 800), addressed to Ghaerbald, then Bishop

[1] Mansi, vol. xiv. p. 55 (art. 41). [2] *Ibid.*, p. 60 (art. 20).
[3] Baluze, vol. i. p. 503.

of Liege, a letter,[1] which is the first in that series of documents. He took notice that certain children, presented at the preceding Epiphany for public baptism, had been examined by his order as to their knowledge of the Lord's Prayer and the Creed; and that, being found wanting, he had caused their baptism to be deferred till they should be better prepared. He urged the bishop to impress upon his clergy the necessity of paying more attention to that part of their duty; and the letter ended with an admonition to the bishop 'to be mindful concerning the duties of the priestly ministry, and for that purpose to convene an assembly of the priests of his diocese, and carefully search into and examine the truth of that matter.'

On this the bishop addressed two pastoral letters,[2] suitable to the occasion (which follow next in the series),—the one to his 'flock' in his seignories of Condros, Loortz, Hasbain, and Ardennes; the other to the priests of his diocese. To the former he mentioned, to the latter he sent copies of, the Emperor's communication; taking to himself some share of the reproof which it conveyed, but intimating that he feared there must have been neglect of duty by many of his clergy.

The fourth document, which succeeds this, is another letter[3] from the Emperor to the same bishop, appointing a special fast to be observed, for the calamities of famine, pestilence, and war, then afflicting the empire; and directing notice of it to be given in all the 'baptismal churches' and monasteries of the diocese. To this was subjoined (not in a separate, but in the same manuscript) an episcopal charge,[4] by the same prelate, under seventeen heads; and

[1] Martene and Durand, *Ampliss. Coll.*, vol. vii. p. 19.
[2] *Ibid.*, pp. 16, 20. [3] *Ibid.*, p. 21. [4] *Ibid.*, p. 23.

after that, the 'Sacerdotal Laws' of 'the chosen priests,[1] with the six articles added to them. Among the other topics specially dealt with by the bishop's charge are the duty of teaching children the Lord's Prayer and the Creed, the observance of the Lord's Day and festivals and fasts, and the payment of tithes. All these are the subjects of different articles in the 'Sacerdotal Laws,' the first being that to which the Emperor had particularly directed the bishop's attention. As to tithes, the bishop ordered that all defaulters, of whatever degree, should be brought before him, and should cause their occupying husbandmen (*familias*) to appear at such places as he should appoint. The charge concluded with a declaration of his readiness and desire to reform all abuses which might be brought to his notice.

Charlemagne had suggested that the bishop should convene a synodical assembly, to 'search into and examine the truth of the matter' 'concerning the duties of the priestly ministry;' and it is at least probable, that the bishop, or his successor (for he died in A.D. 808), acted upon that suggestion; and that some priests, qualified by their learning and piety, may have been chosen to draw up a short code of rules for the instruction and use of priests in that and, perhaps, some other dioceses. If this was done, the twenty-one articles of 'Sacerdotal Laws,' which in the Andain manuscript follow Bishop Ghaerbald's charge, are of just such a nature and character as might be likely to have arisen out of that occasion. Various causes (perhaps, among others, the necessity for consideration by the bishops on whose authority they were to be issued), may have caused their final settlement, in the

[1] Martene and Durand, *Ampliss. Coll.*, vol. vii. p. 26.

form in which they were published, to be delayed for five or more years after Bishop Ghaerbald's death. In the whole series of documents there is so much appearance of connection and mutual relation, as to make it at least probable, that their association together in the Andain manuscript was not the arbitrary act of the monk or clerk who transcribed them in a later century. That they all belong to the first quarter of the ninth century is certain. Until some more reasonable account is given of the matter, it seems to me to be a probable conclusion, that these 'Sacerdotal Laws' were prepared and issued primarily for the bishopric of Liege and churches dependent upon it, and for the dioceses of such bishops of other neighbouring parts of the Frank empire as may have concurred in their adoption; and that this was done within a short time after the death of Charlemagne.

## CHAPTER II

### CONTINENTAL LAWS AS TO TITHES

### § 1. *Before Charlemagne*

In the preceding chapter I have spoken of the ecclesiastical rules and customs which, from the time of Pope Gelasius to the tenth century, governed, upon the continent of Europe, the episcopal administration of diocesan revenues, including tithes. Of tithes, particularly, I propose now to speak.

In the *Decretum* of Gratian, several passages, now admitted to be spurious, are cited, as from works of St. Augustine,[1] St. Jerome,[2] and St. Ambrose,[3] to prove the assertion by those Fathers of a canonical obligation to pay tithes. But in the works of two at least of them, St. Augustine[4] and St. Jerome,[5] there are genuine passages, which,

[1] *Decretum*, pars ii., causa xvi., quæst. 1, cap. 66: '*Decimæ tributa sunt egentium animarum*,' etc. And *ibid.*, quæst. 7, cap. 8: '*Majores nostri*,' etc.

[2] *Ibid.*, quæst. 1, cap. 68: '*Liberum est clericis decimas monachis concedere*,' etc.

[3] *Ibid.*, quæst. 2, cap. 5: '*Nam qui Deo non vult reddere decimas*,' etc. And quæst. 7, cap. 4: '*Fideliter decimas dat*,' etc.

[4] *Sermo* 85 (on Matt. xix. 17), *Opera*, vol. vii., Venice 1802, p. 454.

[5] Comm. on Malachi, cap. 3 (*Opera*, vol. vi., Venice 1768), pp.

reasoning from the analogy of the Levitical law, and from our Lord's saying, that the righteousness of His disciples ought to exceed that of the Scribes and Pharisees, urge upon Christians the dedication, for religious and charitable purposes, of at least a tithe of their means. Cæsarius,[1] Archbishop of Arles from A.D. 503 to 544, appears to have been the first writer who more distinctly placed the claim of the Church to tithes on the footing of right. 'Tithes,' he said, 'are not ours, but appointed for the Church' (*ecclesiæ deputatæ*).

There is no mention of tithes in any part of the ancient canon law of the Roman Church, collected towards the end of the fifth century by Dionysius Exiguus.[2] Two Gallican Councils of the sixth century—the second Council of Tours[3] (A.D. 567), and the second Council of Macon[4] (A.D. 585)—are the earliest synodical authorities commonly cited for the requirement of tithes as payable of right to the Church. But the genuineness of the supposed Acts of that second Council of Macon is too doubtful to make it, for this purpose, a satisfactory authority. If genuine, they would seem to prove that the Mosaic law, as to the payment of tithes, was then regarded not only as binding from the first upon Christians, but as having been for centuries universally observed. For the fifth of the canons attributed to that Council (after a preamble as to the necessity of restoring to their former state all matters concerning the Catholic faith which had fallen into decay), runs thus :—

976-977. Cited also by Gratian (*Decret.*, pars ii., causa xvi., quæst. 1, cap. 63).

[1] *Homil.* 9, 21 (see Thomassinus, *De Beneficiis*, cap. 6, p. 29, Mentz 1787).

[2] *Ante*, p. 9.

[3] Mansi, vol. ix. p. 807.

[4] *Ibid.*, p. 951.

'The laws, therefore, of God, providing for the priests and ministers of churches, commanded all the people to render the tithes of their fruits to the holy places, as the lot of their (the priests') inheritance; so that, without hindrance from any kind of labour, they might have leisure for their spiritual duties. Which laws the whole body of Christians for a long space of time observed inviolate: but now, by degrees, nearly all Christians are seen to be gainsayers (*prævaricatores*) of the laws, while they refuse to fulfil those things which are divinely commanded. Wherefore, we ordain and decree, that the ancient custom be restored by the faithful; and that all the people bring their tithes to those who serve in the sacred offices; which being applied by the priests either for the use of the poor, or for the redemption of captives, they may obtain for the people, through their prayers, peace and salvation.'

A witness who proves too much is generally discredited; and this canon seems to prove too much for that time, and may therefore reasonably be suspected of spuriousness.[1]

As to the second Council of Tours, there is no mention of tithes in its canons or recorded Acts. But there is extant a pastoral letter[2] from four bishops, who were present at that Council, to the people (*plebem*) of their province, written after the synod, in a time of pestilence. That pastoral epistle cannot properly be said to place the payment of tithes on the footing of canonical obligation. It is an urgent exhortation to the people to 'follow the example of Abraham, by paying tithes of all their means, in order to save and to obtain God's blessing upon the rest, if they wish to be received into Abraham's bosom, and to reign with Christ'; and, beyond this, on account of the then threatened mortality, to give the Church the tenth of their *slaves*; or, if they have none, but have children, to pay something for each child towards the redemption of captives.

[1] See Selden, *Hist. of Tithes*, ch. 5, §§ 5, 6 (ed. 1618), pp. 57, 58, 65.

[2] Mansi, vol. ix. p. 809.

An early Spanish Council (that of Seville, A.D. 590) has also been quoted by some writers,[1] not only as enjoining the payment of tithes, but as enumerating titheable matters in considerable detail. But the genuine Acts of that council[2] contain nothing about tithes. Such a canon was, indeed, attributed to it by Ivo, who (like other canonists of his class) has much apocryphal matter under false descriptions. That 'fragment' (as Mansi calls it[3]) is in part taken from a capitular made at Aix-la-Chapelle by the Emperor Louis the Simple,[4] in A.D. 816.

That the payment of tithes, not long after the date of the second Council of Tours, acquired in the Western Church (if it did not previously possess) the character of a recognised ecclesiastical duty, is certain. But I have met with no canon enforcing it under ecclesiastical penalties earlier than that of the Council of Rouen (A.D. 630), quoted in the second part of Gratian's *Decretum*;[5] which, after saying that 'all the tithes of the earth, whether of corn or of the fruits of trees, belong to the Lord,' took notice, that 'many were found unwilling to give tithes;' and ordered that all such persons should be three times admonished, and, if those admonitions should fail, placed under anathema, until they might make satisfaction and suitable amends. There was no mention of tithes in any ancient code[6] of canon law before Charlemagne's time, nor in the collection of canons given to that emperor by Pope Adrian I.[7]

[1] Prideaux, *Original and Right of Tithes* (ed. 1736), p. 92.

[2] Mansi, *Concil.*, vol. x. p. 450; and see Selden, *Hist. of Tithes* (ed. 1618), p. 61. [3] *Ibid.*, p. 453. [4] *Post*, p. 85.

[5] Causa xvi., quæst. 7, cap. 5.

[6] Not in the Code of Dionysius Exiguus (*ante*, p. 9), nor in that published by Pithou (*Codex Canonum Vetus Ecclesiæ Romanæ*, Paris 1687).

[7] The '*Compendiosa traditio*' (of Oriental and African Canons)

## § 2. *Legislation of Charlemagne and his Successors.*

Civil legislation on this subject, upon the Continent, began with the celebrated ordinance of the eleventh year of Charlemagne's reign as King of the Franks, made in a general assembly of his Estates, spiritual and temporal, A.D. 778-779:[1]

'Concerning tithes, it is ordained that every man give his tithe, and that they be dispensed according to the bishop's commandment.'

This was followed (A.D. 789) by another capitular, for Saxony,[2] appointing tithes to be paid out of all public property (*de omni re quæ ad fiscum pertinet*), enjoining all men 'whether noble, or gentle, or of lower degree (*tam nobiles et ingenui, similiter et liti*) to give according to God's commandment, to the churches and priests, of their substance and labour: as God hath given to each Christian, so ought he to repay a part to God.' A capitular of

given by Pope Adrian I. to Charlemagne, A.D. 773 (Mansi, vol. xii. p. 861). Sirmondi says that the Pope not only gave Charles this 'Epitome,' but also the text of the same canons in full, with a collection of Papal decretals, from Siricius (A.D. 318) to Gregory II. (A.D. 715); which was first published at Mentz (under the same title as by Pithou), in A.D. 1528, with a letter from the Pope, in Latin acrostic verses, to the king (see Mansi, *ubi supra*, note at p. 882). This is confirmed by the contents of Charlemagne's own ecclesiastical constitutions, eighty in number, of A.D. 789 (Baluze, *Capit.*, vol. i. p. 209). Of these, the forty-nine first are from the Oriental and African Canons, the nine next from decretals of Popes Siricius, Innocent I., Celestine I., Leo I., and Gelasius; and the rest either from the Holy Scriptures, or from royal capitulars. There is no mention of tithes in any of them.

[1] Baluze, vol. i. pp. 196, 197. Selden, *Hist. of Tithes*, ch. 6, § 7.

[2] Baluze, vol. i. p. 253.

A.D. 800,[1] applicable to the whole Frank kingdom, directed the payment of tithes to churches within the 'fiscal' domains.

For Lombardy, the Roman quadripartite division, of tithes expressly, was established by a capitular[2] made in the first year of Charlemagne's empire, A.D. 801; and in the Bavarian edition of the capitulars of Thionville, A.D. 808, there is an article directing the same quadripartite division, 'according to the decree of Pope Gelasius.'[3] This, however, is of doubtful authority; it was not found in six better texts of those capitulars, collated by Baluze. In the Salz capitular[4] of the same emperor, A.D. 804, and in that of A.D. 813,[5] confirming various constitutions of the synods held in the same year, there are articles on the subject of the churches to which tithes ought to be paid; to which I shall refer particularly, in another part of this chapter.

## § 3. *Witnesses and Compulsion.*

The earliest law as to witnesses, in connection with the receipt or distribution of ecclesiastical revenues, is the capitular of A.D. 813,[6] confirming a canon of the third Council of Tours. This, as has been seen in the preceding chapter, related, not to tithes particularly, but to the treasure of the Church generally. But in another canon[7] of the same Council of Tours, there was a direction that tithes were to be dispensed by the priests, under the bishop's direction, for the use of the Church and poor; and to this distribution

[1] Baluze, vol. i. p. 331 (art. 6.): '*Volumus, ut Judices decimam ex omni conlaboratu pleniter donent ad ecclesias quæ sunt in nostris fiscis.*'

[2] *Ibid.*, vol. i. p. 356.

[3] *Ibid.*, p. 428.

[4] *Ibid.*, p. 415.

[5] *Ibid.*, p. 503.

[6] *Ibid.*, p. 503 (art. 16). *Ante*, p. 41.

[7] Mansi, vol. xiv. p. 85 (art. 16).

the canon as to witnesses would be applicable. The sixth Council of Paris[1] (A.D. 829), referring to a quadripartite division of the general church revenue, said that, however clearly a bishop might think himself able to prove his dispensation of the portion allotted to the poor to be in accordance with the principles of the Divine law, yet, agreeably to the Scripture, that 'they may see your good works, and glorify your Father which is in Heaven,' this ought to be established by testimony (*præsenti testificatione*), 'and published by the voice of good fame' (*bonæ famæ præconiis non taceri*). Archbishop Hincmar,[2] thirty years later, required the presence of witnesses for the division into four portions; as in the *Capitulare Episcoporum*, or 'Sacerdotal Laws,' spoken of in the last chapter, it was required for a tripartite division:

'Of the tithes,' he said, 'let four portions be made, according to the canonical rule; and let them, under the testimony of two or three faithful men (*sub testimonio duorum aut trium fidelium*), be studiously and carefully divided.'

The witnesses required by the canon of the third Council of Tours were 'priests and deacons;' but the language of the confirmatory ordinance of Charlemagne (A.D. 813) was general (*cum testibus*). Archbishop Hincmar, when speaking of 'two or three faithful men,' may be presumed to have had in view the civil legislation as to witnesses (in connection with the receipt and payment rather than the distribution of tithes) which had taken place in A.D. 830, and which Selden[3] believed to be the earliest

[1] Mansi, vol. xiv. p. 550 (lib. i., cap. 15, of the Council's Acts).
[2] *Ibid.*, vol. xv. p. 480 (*Capit. ad Presbyteros*, etc., part ii., art. 16).
[3] *Hist. of Tithes*, ch. 8, § 1.

'canonical authority' on that subject. Of this I shall now speak, in connection with the compulsory laws, of which it forms part.

In A.D. 829 (the year in which the sixth Council of Paris was held), the Emperor Louis the Simple, by his capitular at Worms,[1] gave a civil remedy, by distraint, for the recovery of tithes from persons who were unwilling to pay them except on some terms of redemption (*de decimis quas populus dare non vult, nisi quolibet modo ab eo redimantur*). This enactment was at the same time extended to Lombardy by Lothair,[2] whom his father had associated in the empire, and to whom he had assigned the government of the Lombard kingdom; and it fixes, by internal evidence, the date of that which follows (about which there has been some controversy);[3] which was also a law, both of Louis the Simple, and of Lothair for Lombardy. That law begins: 'As to tithes, the ministers of the Commonwealth are to compel them to be given, even by those who are not willing to give them, *as was declared last year*' (*de decimis*,

[1] Baluze, *Capit.*, vol. i. p. 664 (art. 7).

[2] *Ibid.*, vol. ii. p. 340 (*Excerpta ex lege Longobardorum*, art. 39).

[3] '*De decimis ut dentur et dare nolentibus*,' etc. (*ibid.*, p. 333). Auerbach, in his *Præcipuæ Constitutiones Caroli Magni* (A.D. 1545, p. 3, cap. 7), printed this among his selected laws of Charlemagne, but noted in the margin that it was ascribed (in the *Lombard Laws*, lib. iii., tit. '*De decimis*') to the Emperor Lothair. Martene (vol. vii. pp. 5-10), on the authority of a Chigi MS. (published by Mabillon), ascribed to Charlemagne, and to a time earlier than his accession to the empire, all the laws contained in that MS.; which is a miscellaneous collection, supposed to be of the ninth century, of laws, including some on their face Imperial. Muratori (*Rerum Italicarum Scriptores*, tom. ii. p. 133; *Ludovici Augusti Leges*, cap. 34) determined the law in question to belong to the reign of Louis the Simple, on the authority of an Este MS.; and with him agrees Mansi (vol. xiii. p. 1073).

*ut dentur et dare nolentibus, quod anno præterito denuntiatum est, a ministris Reipublicæ exigantur*). It was made, therefore, in the year after A.D. 829; that is, in A.D. 830.

After that sentence, it proceeds thus:—

'And let either four or nine men, of good reputation, or as many as shall be needful, be chosen out of each body of laity of the Public Churches (*de singulis plebibus*), according to the quality of each such Body, to be witnesses between the priest and the people (*ut ipsi inter sacerdotem et plebem testes existant*), where the tithes have, or have not, been given—our object being to avoid the necessity for oaths in such cases. We do not, however, mean that all the persons so chosen as witnesses need always be present when tithes are given;—we have fixed so large a number, to diminish the burden upon each. The actual presence of two will be enough.'

That law went on to provide means for compelling payment;—first, by priestly admonition; then, by exclusion from the Church; then, by the intervention of the civil power, and the infliction of fines; then, by a sort of interdict against defaulters' houses; and last, if the use of all those means failed to produce the desired effect, by taking the defaulters into custody, and bringing them before the Imperial or Royal Courts.[1]

### § 4. *Ancient Baptismal Churches, and their Rights.*

Although the early canon law attributed to the bishops

[1] Milman (*Hist. of Latin Christianity*, vol. iii. p. 87) cites this as a Lombard law of A.D. 803, and also of Lothair (A.D. 825), and of Louis II. (A.D. 875). As to Louis II., Milman followed Baluze (vol. ii. p. 339), but for the other dates he had not that, or (as far as I know) any other authority. Muratori (*ubi supra*) observed that it was easy to confound Louis I. with Louis II., and preferred the authority of the Este MS. It is remarkable that neither Baluze, nor Martene, nor Muratori, nor Mansi, said anything of the internal evidence, by which that question seems to be decided.

a very wide discretion as to the disposal and employment of diocesan revenues, it was not possible that such a power should be exercised without some local organisation, or without the aid of subordinate officers and ministers. As early as A.D. 451, the Council of Chalcedon,[1] by a canon which passed into all the Roman codes, ordered that in the diocese of every bishop there should be a treasurer (*oeconomus*) chosen out of the diocesan clergy, to dispense the Church funds according to the bishop's direction; so that there might be evidence of the manner in which that dispensation was made (*ut ecclesiæ dispensatio præter testimonium non sit*), and any waste of the revenues of the Church, and consequent scandal, might be prevented. The second Council of Seville[2] (A.D. 619), by a canon also adopted into the modern (though it does not appear to have found a place in the ancient) Roman canon law, required the strict observance of this rule; and forbade the substitution of lay for clerical treasurers, which had been introduced by some Spanish bishops.

Although there were not, in those times, parishes in the modern sense, the principal[3] and more ancient[4] churches became local centres of administration; and these, at an early date, obtained recognised rights and privileges, within districts[5] over which they exercised some sort of authority.

[1] Mansi, vol. vi. p. 1228 (Canon 26); Gratian, *Decret.*, pars ii., causa xvi., quæst. 7, cap. 21.

[2] Gratian, *Decret.* (*ibid.*), cap. 22.

[3] '*Majores*' (see *post*, capitular of Louis II., A.D. 855).

[4] '*Antiquitus constitutæ*' (*post*, capitular of Charlemagne, A.D. 813).

[5] Although the word '*parochia*' may sometimes have been applied to these districts (as, *e.g.*, by the Portuguese Councils of Braga and Merida, A.D. 567 and 666, *ante*, p. 34), they were more generally called '*dioeceses.*' They were certainly not parishes of the modern kind; and to call them by that name (as seems to be done by Dean Milman, *Latin*

They were called 'Mother Churches' (*matrices*),[1] because private oratories and chapels within their circles were dependent upon them; those who worshipped in such oratories and chapels were bound, according to the canons of several Councils, to resort to the mother church three times a year; which rule did not become obsolete until the eleventh century.[2] They were called 'People's Churches' (*plebes*),[3] on account of the public character by which they were distinguished from those built on private men's estates. An imperial capitular of A.D. 806 prohibited the solemn celebration of festivals elsewhere than in public townships (*vicis publicis*);[4] that is, places within the royal or public domain, not granted to be held as *beneficia*, or fiefs, by private persons. Many of those churches were called *monasteria*,[5] or, in Saxon, *minsters*, because they were usually of a collegiate character, with a more or less numer-

*Christianity*, vol. iii. p. 87, note) might lead to misconception. The distinction is well marked in Gratian's *Decretum* (pars ii., causa xiii., quæst. 1), where, in a controversy as to tithes between two churches, this position is stated as clear: '*Constat, unamquamque Baptismalem Ecclesiam habere dioecesim sibi legitime assignatam: sicut et parochiales ecclesiæ habent parochias sibi distributas.*' The words '*parochia*' (of which the leading sense is *neighbourhood*), and '*dioecesis*' (of which the leading sense is *administration*), were flexible; both originally signifying the bishop's diocese.

[1] See Ducange, *in voc.* 'Matrica,' 'Matrix Ecclesia.' Archbishop Hincmar's Articles of Inquiry, A.D. 858 (Mansi, vol. xv. p. 480) were to be executed '*per singulas matrices ecclesias, et per capellas*' of his province.

[2] See Baluze's note, *Capit.*, vol. i. p. 1063.

[3] Ducange, *in voc.* 'Plebes'; capitular of Charles the Bald, A.D. 876 '*Ecclesias baptismales, quas plebes appellant*' (Baluze, vol. ii. p. 242); Leo IV., in *Decretum*, pars ii., causa xiii., quæst. 1, § 1; and Walafrid Strabo.

[4] Baluze, vol. i. p. 457; and see Ducange, *in voc.* 'Vicus Publicus.'

[5] See Ducange, *in voc.* 'Monasterium.'

ous body of clergy, either secular canons or monks, living together within their precincts.

These phrases were rather popular than technical. 'Baptismal' churches (*baptismales*)[1] was their most proper designation; which meant churches having public baptisteries, in which, at the great feasts of Easter and Pentecost (sometimes Epiphany[2] also), the sacrament of baptism was solemnly and publicly administered for the people of their several districts. Sometimes they were themselves called baptisteries (*baptisteria*),[3] and the titles to them were called baptismal (*tituli baptismales*). It was decreed by the Synod of Verneuil,[4] held under Pepin, the father of Charlemagne, in A.D. 755, that 'no public baptistery should be established except by the bishop's command, or in any places, except such as he should appoint; but this was not to prevent any priest from administering the sacrament of baptism elsewhere in cases of emergency.' It was at the Epiphany celebration of baptism, in the chief baptismal church of the diocese of Liege, that Charlemagne took the part mentioned in his first letter to Bishop Ghaerbald;[5] and it was doubtless to such solemn celebrations of that sacrament at the appointed times that the *Capitulare Episcoporum*[6] referred, in the article numbered ten in both the Andain and the Metz manuscripts: 'That the law and time of

[1] See, on this whole subject, the note of Baluze, *Capit.*, vol. i. p. 1063. As to the great public baptisms at Easter and Pentecost, and also Epiphany, see note of Martene and Durand in *Amplissima Collectio*, vol. vii. p. 20.

[2] Walafrid Strabo (*de ecclesiasticarum rerum exordiis et incrementis*), cap. 26. (Migne's *Patrologiæ Cursus*, vol. cxiv. p. 959.)

[3] Baluze's note, *ubi supra*.

[4] Baluze, *Capit.*, vol. i. pp. 167, 171.

[5] Martene and Durand (*Ampliss. Collect.*), vol. vii. p. 20; *ante*, p. 43.

[6] *Ante*, p. 37, and Appendix A.

baptism, at the proper seasons, according to the canonical institution, be most carefully observed by all priests'; (with a qualification, as to time, in the next article, like that as to place in the canon of Verneuil, viz. 'That all priests should with the greatest diligence administer baptism, at whatever hours, to those who by reason of ill-health might stand in need of it').

It was in all the 'baptismal churches'[1] of the diocese of Liege that Charlemagne commanded notice to be given by Bishop Ghaerbald of the special fast which he had appointed. The rights and privileges of 'baptismal churches' (by that name) are among the subjects of examination by Gratian[2] in the second part of his *Decretum.*

Of such churches there was at first only one (the cathedral)[3] in each diocese; but when dioceses became large the number was increased. The most important of them were conventual, served by many priests and clerks; and it was canonically necessary[4] that they should be served by at least one priest, with the assistance of one or more deacons and inferior clerks.

Walafrid Strabo[5] (writing in the early part of the ninth century) speaks of the priests of baptismal churches as

[1] Martene and Durand (*Ampliss. Collect.*), vol. vii. pp. 21-23: '*Per singulas ecclesias baptismales.*' *Ante*, p. 43.

[2] *Decret.*, pars ii., causa xiii., xvi., and xxv.

[3] Baluze's note, vol. i. p. 1064, quoting and approving the statement of Joseph Visconti (*Josephi Vicecomitis*).

[4] Baluze's note, *ubi supra*, p. 1065: '*Cum in reliquis sufficeret unus Presbyter, in istis necessarius erat unus diaconus cum Presbytero.*' And see Baluze, *Capit.*, vol. ii., App. p. 1575: '*Capitula data Presbyteris,*' cap. 8; and Bishop Riculf's *Constitutions for Soissons* (A.D. 889), art. 11 (Mansi, vol. xviii. p. 85).

[5] *Ubi supra*, cap. 31 (Migne's *Patrol.*, vol. cxiv. p. 964).

having authority over priests of lower degree (*presbyteri plebium, qui baptismales ecclesias tenent, et minoribus presbyteris præsunt*), and as qualified, for that reason, to be 'vicars,' or 'centenarions' (*centenariones*), of the bishop; an office, for the oversight of country churches, superior to that of rural dean (*decuriones, vel decani*).

When these greater and more ancient churches, or minsters, first acquired the right to receive and administer tithes, or other diocesan revenues accruing within their districts, does not clearly appear. A canon of the Council of Chalcedon[1] (A.D. 451), establishing, as between diocese and diocese, in cases of disputed titles, a rule of thirty years' prescription, was afterwards by analogy extended to them. Selden[2] quotes from Cassian the hermit (who died about A.D. 430) a passage, showing that 'in Egypt some holy abbots had tithes of all fruits offered them,' accepting the dispensation of them as 'treasurers for the poor.' In the eighth and ninth centuries (according to Lupus, Abbot of Ferrieres, as quoted by Van Espen),[3] bishops and laymen preferred paying their tithes to canons, rather than rural priests (*presbyteris pagensibus*), on account of the greater

[1] Mansi, vol. vi. p. 1228 (Canon 16). See Gratian's *Decretum*, pars ii., causa xiii., quæst. 2, cap. 1.

[2] *Hist. of Tithes*, ch. 5, § 1, ed. 1618, p. 47; and 'Review,' *ibid.*, p. 465.

[3] *Jus Univ. Canon.*, part ii., sect. 4, tit. i., cap. 3, § 18. '*Eorum sanctitati creditum fuit totum decimarum onus; et honesta Presbyteri alimentatio, et ecclesiasticæ fabricæ reparatio, et cura pauperum et peregrinorum.*' Lupus was a pupil of Rabanus Maurus. He became Abbot of Ferrieres (where Alcuin was one of his predecessors) A.D. 842. He took a leading part in the Councils of Verneuil, A.D. 844, and of Soissons, A.D. 855, and he was a correspondent of the Anglo-Saxon King Ethelwolf, and of Wigmund (archbishop), and Altsig (abbot), of York. (See Haddan and Stubbs, *Councils*, etc., vol. iii. pp. 634, 635, 648, 649).

reputation of the former for sanctity, and the greater confidence felt in the integrity of their administration. It was probably through causes such as these, that baptismal churches acquired such rights as they claimed to tithes. Another authority of the ninth century, Amulo, Archbishop of Lyons, in a letter to Theobald, Bishop of Langres (quoted by Baluze),[1] mentions those rights, among other instances of 'the dignity and authority of baptismal churches.'

'Let the lay-people (*unaquæque plebs*) everywhere abide quietly in their own dioceses and churches (*parochiis et ecclesiis, quibus attributa est*), and let them offer willingly their vows and oblations at those Sanctuaries where they receive holy Baptism, where they partake of the Lord's Body and Blood, where they may hear solemn Masses, and obtain from their priest penance for sin, visitation in sickness, and burial in death; where, also, they are commanded to offer their tithes and first-fruits, where they rejoice in the initiation of their children into the grace of baptism, where they continually hear God's Word, and are instructed in what they ought and what they ought not to do.'[2]

A decretal epistle of Pope Leo IV. in the same century, (quoted by Gratian),[3] laid it down as a rule approved, not by that pontiff only, but by his predecessors, that tithes ought to be paid 'only to those public churches where the holy baptisms are administered' (*plebibus tantum, ubi sacro-*

[1] Note on Baptismal Churches, *Capit.*, vol. i. p. 1065. Amulo was Archbishop of Lyons from A.D. 841 to A.D. 853.

[2] That these were the greater, and not the seignorial churches, is evident from the capitular of Louis II. (A.D. 855): '*Quidam vero laici, et maximè potentes ac nobiles, quos studiosius ad prædicationem venire oportebat, juxta domos suas basilicas habent, in quibus divinum audientes officium, ad majores ecclesias rarius venire consueverunt*' (art. 3, Baluze, vol. ii. p. 352).

[3] *Decretum*, pars ii., causa xiii., quæst. 1, § 1. Leo IV. was Pope from A.D. 847 to A.D. 855.

*sancta baptismata dantur*). And as to sepulture, a canon of the Council of Tribur[1] (A.D. 895), also cited in the *Decretum*,[2] ordered that it should take place, whenever possible, in the burial-ground of the principal church of the diocese (*apud majorem ecclesiam, ubi sedes est Episcopi*); or, if that were not possible, in the burial-ground of the church of some religious house of canons, monks, or nuns, living together conventually. If this, too, could not be done, then a man was to be buried where he had paid his tithes while living.

Every 'baptismal' church had its district (sometimes called 'diocese')[3] assigned, or presumed from usage to have been assigned, by competent authority; and in each such district there could be only one such church, with its dependent chapels.[4] The older organisation of these 'sub-dioceses' (if I may so call them) may have been in some respects the model on which the modern parochial system grew up.

Charlemagne, by his capitular *de villis*[5] (A.D. 800), while reserving generally the tithes of royal or public lands to the public churches on the royal domain (*in nostris fiscis*), made an exception in favour of churches elsewhere, having ancient titles to them (*ad alterius ecclesiam nostra decima data non fiat, nisi ubi antiquitus institutum fuit*). And by

[1] Mansi, vol. xviii. p. 139.

[2] Pars ii., causa xiii., quæst. 2, cap. 6.

[3] *Ibid.*, causa xvi., quæst. 1; and causa xxv.

[4] '*Plures baptismales ecclesiæ in unâ terminatione esse non possunt; sed una tantummodo, cum suis capellis; et si contentio fuerit de terminatione duarum matricum, plebes utrarumque discernant, et, si non convenerint, lis Dei judicio discernatur*' (Grat., *Decret.*, pars ii., causa xvi., quæst. 1, cap. 54, where that canon is ascribed erroneously to a Council of Toledo. Other canonists had, before Gratian's time, attributed it to a Council of Aix).

[5] Baluze, *Capit.*, vol. i. p. 331.

his imperial ordinance at Salz[1] (A.D. 804) he established, generally, the right of ancient baptismal churches to tithes bestowed upon them with the consent of their diocesan Bishops (*ubi antiquitus fuerint Ecclesiæ Baptismales, et devotio facta fuit, juxta quod Episcopus ipsius parochiæ ordinaverit*); adding, that 'if, by gifts of kings or other good and God-fearing men, anything from which the older churches had been accustomed to receive tithes, under ancient titles, should have been granted to bishoprics or monasteries, the earlier gift or devotion should continue in force, and the tithes should be paid by those in possession of the land.'

One of the articles of the capitular of A.D. 813[2] (confirming canons made in almost identical terms by two of the synods of that year, those of Mentz and Arles) was for a like purpose; and was repeated,[3] in terms or substance, in many later laws.

'Churches established of old time are not to be deprived of tithes, or of any other possessions, so as to give them to new churches (*Ecclesiæ antiquitus constitutæ nec decimis, nec aliis possessionibus, priventur, ita ut novis ecclesiis tribuantur*).'

In some of the repetitions of that law, as well as glosses of canonists, after A.D. 816, it was qualified so as to reconcile it with the legislation of Aix-la-Chapelle[4] in that year, of which I shall hereafter make mention; in others it was not. The Council of Mentz, held under Archbishop Rabanus Maurus[5] (A.D. 841), allowed exceptions to be made to it

[1] Baluze, *Capit.*, vol. i. p. 415.

[2] *Ibid.*, p. 503. (The Canons of Mentz and Arles are in Mansi, vol. xiv.)

[3] *E.g.*, A.D. 899 (Baluze, vol. ii. p. 18), 888 (Mansi, vol. xvii. p. 62), 895 (*Ibid.*, vol. xviii. p. 139), 958 (*ibid.*, pp. 463-467).

[4] Baluze, *Capit.*, vol. i. p. 565. [5] Mansi, vol. xiv. p. 905.

'with the consent and advice of the bishop;' and Herard, Archbishop of Tours[1] (A.D. 855-870), allowed them 'on very strong grounds of practical utility.' Gratian, in his *Decretum*,[2] produced an apocryphal decree of Pope Anastasius, in which those who, 'without their bishop's knowledge, might bestow their tithes on any other than the baptismal church,' were threatened with excommunication; and, in a gloss[3] upon a canon ascribed by him (erroneously) to a Council of Toledo, he said that the rights of those churches were to be understood as secured to them against diminution or encroachment, not absolutely, but 'unless they should be assigned, by the bishop's disposition (*episcopo disponente*), to other churches.'

## § 5. *Irregular Appropriations of Tithes.*

Many encroachments on the ancient rights of baptismal churches did in fact take place, not only for purposes authorised by the laws of Aix-la-Chapelle (the effect of which will be the subject of a later chapter), but for others, always condemned by the law of the Church; such as grants of tithes to monasteries by laymen,[4] without episcopal concurrence; and the feudalisation of tithes in the hands of laymen,[5] under tenures often created by the bishops themselves, or by other ecclesiastical tithe-owners. The baptismal churches long struggled for their privileges; and were supported at the Council of Pavia[6] (A.D. 855, under the

[1] Baluze, *Capit.*, vol. ii. p. 129.

[2] Pars ii., causa xvi., quæst. 1, cap. 55.

[3] *Ibid.*, gloss on cap. 54.

[4] See numerous authorities, cited by Gratian (*Decret.*, pars ii. causa xvi., quæst. 7).

[5] *Ibid.*

[6] Mansi, vol. xv. p. 18; Baluze, *Capit.*, vol. ii. p. 257.

Emperor Louis II.), and by a capitular of Charles the Bald,[1] A.D. 869. Canons and laws were passed for the punishment, by ecclesiastical censures and civil penalties, of laymen who, 'for reward or favour,' took upon themselves to divert their tithes from the churches entitled to receive them;[2] or, who, 'despising the direction of their bishops, gave their tithes, not to the churches where they received baptism, preaching, imposition of hands, and the other Christian sacraments, but to private churches on their own estates and fees, or to clerks of their own choice, at their pleasure.'[3] It was not, however, by laymen only, that the ancient rights of baptismal churches were subverted. When they were in the hands of canons, or other secular priests, the monastic orders[4] were constantly invading them; sometimes by getting grants of tithes, and sometimes by procuring exemptions, which it was their policy in every possible way to extend, and which the Popes were afterwards[5] obliged to curtail. Van Espen[6] says that, 'when in the tenth and eleventh centuries laymen were willing to restore to ecclesiastical uses tithes and churches of which they or their ancestors had taken possession, they preferred, generally

[1] Baluze, *Capit.*, p. 212.

[2] Capitular of Worms, A.D. 829 (Baluze, vol. i. p. 664); Synod of Pavia, A.D. 850 (Mansi, vol. xiv. p. 936); Archbishop Herard's Constitutions (Baluze, vol. ii. p. 129).

[3] Synod of Pavia, A.D. 855 (Mansi, vol. xv. p. 18; Baluze, vol. ii. p. 357). See *ante*, p. 60.

[4] See letter of Paschal II. (A.D. 1099-1113) to Victor, Bishop of Bologna, in Grat. *Decret.*, pars ii., causa xvi., quæst. 1, cap. 9; also *ibid.*, quæst. 7, cap. 2, 39; *Decret. Greg. IX.*, lib. iii., tit. xxx., cap. 3, 4, 9, 10, 11, 27, 30, 34, 35; *Sexti Decret.*, lib. iii., tit. xiii., cap. 2.

[5] *Decret. Greg. IX.*, lib. iii., tit. xxx., cap. 8, 9, 10; *Sexti Decret.*, lib. iii., tit. xiii., cap. 2.

[6] Van Espen, *Opera* (ed. 1753-59), vol. iii. p. 596.

(*passim*), to give them to monks or canons,[1] rather than to the churches from which they had been taken away; although this had been denounced as unauthorised by many ecclesiastical laws, and monks and canons had been forbidden to receive tithes or churches from lay hands without the bishop's consent.' That they obtained them very early with the consent or by the act of bishops, is clear from a charter of a bishop of Le Mans,[2] dated in A.D. 649-650 (under Clovis II.), by which he granted for ever to a convent of nuns all the tithes arising within ten townships belonging to his see. In A.D. 997 a synod of bishops was held at St. Denis near Paris, in order to take measures for the restitution to the Church of such tithes as might be uncanonically possessed by laymen or monks. This council was attended by the Abbot of Fleury, Abbo, a man of great fame, and very zealous for monastic institutions. He offered to the intended resumption a strenuous resistance; which had the effect (although his biographer, Aimonius,[3] threw the blame on the bishops whom he resisted) of so exciting the lay people, that an angry mob invaded the synod, and broke it up in disorder.[4] A controversy followed between Abbo and his own bishop, Arnulph of Orleans. The abbot addressed a public defence[5] of his conduct to Robert and John, Kings of the Franks, in

[1] See citation from Abbot Lupus (*ante*, p. 59, note).

[2] '*Omnes decimas de supradictis villulis, tam de annonis, quam agrario, vinum, fœnum, omnium pecudum seu farmatico, vel undecunque decimari debetur . . . ipsam decimam omni tempore ipsi monasterio habeat concessam*' (Mabillon, *Vetera Analecta*, tom. ii., p. 278).

[3] See Mabillon, *Vetera Analecta*, tom. ii.

[4] Baronius, *Annales*, vol. xvi. p. 434.

[5] '*Apologeticus Abbonis adversus Arnulphum Episcopum Aurelianensem, et aliquot Epistolæ*' (App. to Pithou's *Codex Canonum Vetus Ecclesiæ Romanæ*, Paris 1687, pp. 398-400, 417, 418).

which he accused bishops of avarice and corruption, and appealed to the civil power to exercise the authority in these matters, which (he said) had been admitted by the most ancient councils to belong to emperors and consuls. And in a letter to a brother monk named Gerald,[1] he inveighed against the covetousness, 'which was not satisfied with a third, or a fourth at least, of the revenues of their own churches;' citing Gregory the Great for the proposition, that 'monasteries ought not to be disquieted by bishops;' and inquiring what Scriptural authority there was for requiring yearly accounts of church endowments or tithes to be rendered to bishops?

Gregory VII.,[2] in his Lateran Council of A.D. 1078, made a canon forbidding the possession of tithes by laymen, and declaring them guilty of sacrilege unless they restored them to the Church, whether received from bishops, or kings, or any other persons. And, after affirming the obligation of all to pay tithes, he thus endeavoured to restore the bishop's power over their distribution:

'Our judgment is, that the tithes should be under the bishop's hand; that he who is set over the rest should distribute them justly to all, without showing more honour to one than to another, so as to disturb scrupulous hearts; but all things ought to be common; for it seems wrong that some priests should have, while others suffer loss: and, as there is one Catholic faith, so it is needful, that he who has the care of the whole diocese, although there are in it many churches, should yet faithfully distribute to them all.'

It was found, however, that this canon could not be put in force; and the question was soon again raised, at the Council

[1] App. to Pithou's *Codex Canonum Vetus Ecclesiæ Romanæ*, Paris 1687, pp. 398-400, 417, 418; also Bouquet, *Recueil des Histoires*, vol. x. p. 440; and Galland, *Bibliotheca Veterum Patrum*, vol. xiv. p. 151.

[2] Grat. *Decret.*, pars ii., causa xvi., quæst. 7, cap. 1.

of Clermont[1] (A.D. 1095) 'as to churches and ecclesiastical possessions, acquired without the sanction of bishops from clerks and monks.' Pope Urban II. found it necessary, 'for the sake of peace, and to avoid scandal,' to confirm all such titles, acquired (however irregularly) from clerks, monks, *or other persons*, in favour of those who were then in possession under them;—at the same time prohibiting their creation for the future without the bishop's consent.

Even this did not stop those alienations. In A.D. 1100, a Council of Poictiers[2] denounced, as no better than heretics and antichrists, certain bishops who were reported to have bestowed the tithes and oblations of their people, 'not on the priests of their dioceses, but on lay persons—soldiers, servants, and (worst of all) their own kindred.' Pope Alexander III.,[3] confirming a canon of a Council of Tours (A.D. 1163), took notice that, bad as it was for laymen to usurp ecclesiastical revenues which properly belonged to the priests, they were sometimes encouraged in that error by the clergy themselves: bishops and other prelates giving them permission to dispose at their will of tithes, and even of churches. And he decreed that any one who should grant to a layman, continuing such (*alicui laico, in sæculo remanenti*), any tithe or oblation, should be degraded from his office, until he made amends. The same Pope had, shortly before,[4] declared a grant of tithes made in perpetuity to a layman by the Abbot of Montreuil to be void; and had ordered its recipient to be excommunicated, until he should

[1] Grat. *Decret.*, pars ii., causa xvi. quæst. 7, cap. 2.

[2] *Ibid.*, cap. 3, where the canon of this council is attributed to Gregory VII. See Richter's note, *Corpus Juris Canonici*, Leipsic 1839, vol. i. p. 689.

[3] *Decret. Greg. IX.*, lib. iii., tit. xxx., cap. 17. See Richter's note.

[4] *Ibid.*, cap. 15.

release his claim 'freely and absolutely' to the Church. In the third Lateran Council (A.D. 1179), the same Pope made a celebrated constitution,[1] often afterwards referred to by English common lawyers, as having put an end to the free appropriation of their tithes by laymen, which (in practice) until then existed. The form of that constitution varied in different manuscripts. According to some it ran thus: 'We forbid laymen, detaining tithes at their soul's peril, to transfer the title to them, by any means, to others: and if any one shall receive, and not restore them to the Church, let him be deprived of Christian burial.' This form of prohibition may, or may not, justify the construction placed upon it by English lawyers. Other manuscripts, however, confined it to grants of tithes to laymen;[2] and qualified it by the exception of gifts to which the bishop might have consented. It is not improbable that it may have been known, in this country, in its more unqualified form.

[1] *Decret. Greg. IX.*, lib. iii. tit. xxx., cap. 19. See various readings in Richter's notes (*Corp. Jur. Canon.*, 1839, vol. ii. p. 341). Selden agreed with the English lawyers: 'Whoever' (he says) 'observes the practice of the preceding time only, and the words both of that council, and to the same purpose of the other held under Calixtus II., may well enough be persuaded that the intent of those canons was not otherwise.' And, after referring to the narrower construction of Innocent III. and later Roman canonists, he adds, 'They may, as they will, understand it by judicial application; but you may, at least, doubt still that the historical understanding of it is to be had out of arbitrary consecrations before practised' (*Hist. of Tithes*, ch. 4, § 7 *ad finem*).

[2] See, as to feudalised tithes, which had become so before the Lateran Council of A.D. 1179, and the lay titles to which were recognised by Continental Jurisprudence, Jouy, *Principes et Usages*, etc., ch. i.

## CHAPTER III

### PRACTICAL WORKING OF THE CUSTOMS OF APPORTIONMENT

THE practical working of the apportionment of church revenues under the older organisation invites attention, before tracing the transition from the system of ancient baptismal churches to that of modern parishes.

### § 1. *The Shares of Bishop and Clergy.*

Of the bishop's share, either of tithes or of other diocesan revenues, not much needs to be said. It was intended to provide him with the means, not only of supporting himself and his *familia* (his ecclesiastical household, however constituted), and meeting other necessary expenses, but also[1] of maintaining the hospitality becoming his office. The manner of doing this was left to his own conscience. Unless in Spain (where, as has been seen, the burden of church repairs was thrown upon it), the bishop's share does not appear to have been interfered with, except when his functions as diocesan were temporarily in abeyance. On one such occasion, in the diocese of Rimini, Gregory the Great[2] directed the shares of the

[1] See Gregory the Great's letter to Augustin (Bede, *Hist.*, lib. i., § 27): '*Una episcopo et familiæ propter hospitalitatem atque susceptionem.*'

[2] Ep. 44, lib. v., indict. 13 (Benedictine ed. of St. Maur, Paris 1705, tom. ii. p. 774).

bishop and the fabric to be added together, and divided into three parts; one for the support of the incumbent of the see, another for the bishop appointed by Gregory himself to administer the diocese, and the third for repairs. On another, during a visitation of the diocese of Girgenti, by a bishop acting as his Commissary, the whole fourth share of the diocesan bishop, accruing while the visitation lasted, was ordered by the same Pope[1] to be paid to the visitor.

As to the share of the clergy, the rule of Pope Gelasius[2] was, that the bishop should distribute it, having regard to the ranks and merits of those who were to participate, according to his own judgment. Gregory the Great[3] recommended a bishop (of Palermo) to appoint annually a *tabularius*, or steward, of the clergy's portion, to make distribution among those clergy whose names were inscribed on lists or tablets to be kept by him. But Gregory, like Gelasius, acknowledged no other rule of distribution than the bishop's reasonable discretion. An appeal was made to him by certain priests of the diocese of Catania, who were dissatisfied with what their bishop had done; but the only direction given by Gregory[4] was, that the fourth portion of all revenues which might come to the Church from the rents or profits of land, or by any other title, should be set apart without deduction, and divided 'dis-

[1] Ep. 12, lib. v., indict. 13 (Benedictine ed. of St. Maur, Paris 1705, tom. ii. p. 737).

[2] In his letter to the Bishops of Dardania, '*clericis pro officiorum suorum sedulitate distribuat;*' and in the first letter to the Church officers of Volterra, '*clericis pro suo judicio et electione dispertiat*'—qualified in the second letter to those officers, by reference to the bishop's 'knowledge of the place and merit of each of them' (Mansi, *Concil.*, vol. viii. pp. 121, 114, 130).

[3] Ep. 44, lib. xiii. indict. 6 (ed. 1705, tom. ii. 1249).

[4] Ep. 7, lib. viii. indict. 1 (ed. 1705, tom. ii. p. 899).

creetly, and in the fear of God,' among the priests, deacons, and clerks in minor orders; with full liberty for the bishop to determine how much each ought to receive, according to his own opinion of the quality and value of their respective services. Later canons of Councils[1] affirmed the same principle, down to the end of the ninth century; though, doubtless, in each *familia* or body of clergy, the course of precedent and practice had its usual effect, and tended to establish an ordinary proportionate rate of dividend, as between different ranks and orders. All participated, unless excluded by some fault of their own; but those higher in office received more than those who were lower: priests received more than deacons, and deacons more than subdeacons, acolytes, exorcists, readers, or doorkeepers.

### § 2. *The Fabric Fund.*

The fabric fund, according to the rule of Gelasius, was to be laid out by the church officers, under the bishop's direction; and any surplus from the expenditure of any year was to be kept in store for the enlargement or improvement of fabrics, or invested in some property productive of revenue 'for the common good.'[2]

The uses of this fund were for repairs; for lighting the churches, with *luminaria* of wax or oil; and for supplying necessary vestments, vessels, and other 'ornaments.'

The churches for which it was provided were the 'greater' or 'baptismal,'[3] and not those on private men's

[1] *E.g.*, the sixth Canon of Worms (A.D. 868), which states the rule of quadripartite division in the exact words of the letter of Pope Gelasius to the Bishops of Dardania (Mansi, *Concil.*, vol. xv. p. 871).

[2] Letters to the Church officers of Volterra (*ibid.*, vol. viii. pp. 114-130).

[3] Capitular of Pavia, A.D. 877, art. 11 (Baluze, *Capit. Reg. Franc.*, vol. ii. p. 242). See *post*, pp. 73, 74.

estates. Even the greater or baptismal churches, within the limits of 'benefices' or lands held by noblemen under the Church, were to be kept in proper repair and condition by them;[1] relieving, to that extent, the diocesan fabric fund. Those 'benefices' were granted upon the terms of paying, by way of rent-service, what were called 'ninths and tenths'[2] to the bishops or ecclesiastical corporations who granted them; and bishops receiving 'ninths and tenths' were bound[3] to see that this duty of their grantees, as to church repairs and lights, was properly performed.

With respect to churches or oratories built by private persons on their own lands, the rights of patronage and other proprietary rights conceded to the founders were subject to the condition, that they should not be destroyed, but should be reverentially preserved.[4]

As to the public churches, it was the duty of every

[1] Frankfort capitular, A.D. 794, art. 24: '*Ut ecclesiæ per eos restaurentur, qui beneficia habeant*' (Baluze, vol. i. p. 267); and canon of Mentz, A.D. 813, art. 5 (Mansi, *Concil.*, vol. xiv.) The word *beneficium*, as used in the Middle Ages, meant *prædium fiscale, quod a Rege vel Principe, vel ab alio quolibet, ad vitam viro nobili utendum conceditur* (Ducange, *in verbo*).

[2] See Thomassinus, *De Beneficiis* (Mentz 1787, tom. iii., lib. i. cap. 8, entitled *Nonæ et decimæ*): '*Qui jure beneficiario fundos ecclesiæ obtinebant laici, decimas ei et nonas solvere tenebantur.*' Also Selden, *Hist. of Tithes*, ch. 6, § 6. The law of Pepin, of A.D. 764, quoted by Prideaux (*Origin and Right of Tithes*, p. 96), relates, not to tithes generally, but to these '*ninths and tenths.*'

[3] See Lombard capitular of A.D. 801, art. 43 (Baluze, vol. i. p. 356): '*Ut vos episcopi, qui in omnibus nonas et decimas accipitis, in vestra providentia sit, quatenus ecclesiæ vel capellæ quæ in vestra parochia sunt emendentur, et luminaria eis præbeatis, ut in eis presbyteri vivere possint.*'

[4] Frankfort capitular, A.D. 794, art. 52 (*ibid.*, p. 269): '*De ecclesiis quæ ab ingenuis hominibus construantur, licet eas tradere, vendere, tantummodo ut ecclesia non destruatur, sed serventur quotidie honores.* As to the power of alienation and sale, see *post*, pp. 81-83.

bishop, under the Frankfort capitulars and the Salz[1] capitular of A.D. 804, to see that those within his diocese were well built and repaired, and also to look after their 'offices and lights.' By the capitulars of Thionville[2] (A.D. 805) reformation was directed to be made of neglected churches, 'without offices or lights;' and also of those 'who received tithes without taking care of the churches.' The Council of Toul[3] (A.D. 859) decreed that 'the churches should be repaired and restored by those who had the use of their possessions; and that all members of the clerical or monastic body belonging to each of them (*ex earum familia*[4]) should assist, as far as possible, in their re-edification.' The capitulars of Charles the Bald at Pavia[5] (A.D. 877), in which Archbishop Hincmar of Rheims, and other Transalpine bishops present concurred, directed the baptismal churches, called *plebes*, to be repaired by 'the sons of the church,' according to ancient custom (*ut ecclesias baptismales, quas plebes appellant, secundum antiquam consuetudinem, ecclesiæ*

[1] Baluze, vol. i. p. 415 (art. 1): '*Ut ecclesiæ Dei bene constructæ et restauratæ fiant, et episcopi, unusquisque infra suam parochiam, exinde bonam habeant providentiam, tam de officio et luminariis, quam et de reliqua instauratione.*'

[2] *Ibid.*, p. 421 (art. 6): '*De ecclesiis sine honore manentibus, absque officiis et luminariis, et de his qui decimas quidem adsumunt, et de ecclesiis non curant, ut omnimodis emendetur.*'

[3] Mansi, *Concil.*, vol. xv. p. 539 (art. 11): '*Ut ecclesiæ sarciantur et restaurentur in ædificiis ab his qui earum rebus utuntur, aut ab unoquoque tale ex earum familia præbeatur adjutorium, per quod, si fieri potest, reædificetur.*'

[4] Ducange explains '*familia ecclesiæ*' as including all who owe service to the Church; and, as used with respect to monasteries, all who share the conventual life. Examples of that use of the word, as to cathedral chapters and other religious houses in the Anglo-Saxon Church (of the years 813, 824, and 844, etc.), will be found in Haddan and Stubbs, *Councils*, etc., vol. iii. pp. 515, 575, 580, 581, 582, 595, 617, 629.

[5] Baluze, vol. ii. p. 242.

*filii instaurent*);—the canonical power of the bishop over tithes being mentioned in the same context.

Archbishop Hincmar,[1] and Bishop Riculf[2] of Soissons, in their constitutions of A.D. 858 and 889 (both enjoining the quadripartite division), directed yearly accounts of the expenditure of the fabric fund to be rendered to the bishop or his officers; showing how much had been laid out for oil or wax-lights, how much for structural repairs, and how much for 'ornaments.'

### § 3. *The Poor's Fund.*

With the poor, widows and orphans, sick and infirm, were associated strangers (*hospites*), foreigners or pilgrims (*peregrini*), and captives. In some laws the poor only, in some (*e.g.*, in Bishop Riculf's[3] constitutions) strangers (*hospites*) only were mentioned. But, when one of these classes was mentioned, all might be understood as comprehended.

Van Espen[4] says, that the portion of the poor, as well as that of the clergy, was distributable according to the bishop's discretion, having regard to the greater or less indigence and merits of particular persons. For this, he quotes an Epistle of Pope Gregory[5] the Great, recommending larger gifts to honest and poor men who were not common beggars, and smaller to those who were. The first Council of

[1] Mansi, vol. xv. p. 480.

[2] *Ibid.*, vol. xviii. p. 85 (art. 11): '*Ex ipsa parte, quæ fabricis debetur ecclesiæ, volumus aut per nos, aut per nostros comministros, rescire quid annuatim, tam in luminaribus olei vel ceræ, quam etiam in restauratione tectorum, vel in ornamentis, inde in ecclesia pareat.*' The '*comministri*,' here mentioned, were (probably) the *œconomus* and the archdeacon.

[3] (*Ubi supra*): '*Quarta hospitibus deputata.*'

[4] *Jus Canon. Univ.*, pars ii., sect. 4, tit. i., cap. 6, § 13.

[5] Ep. 29, lib. ix.

Orleans,[1] in the same spirit, directed the bishop, as far as he could (*in quantum possibilitas habuerit*), to give food and clothing to those who, by reason of infirmity, could not labour with their own hands. Poor persons of the bishop's own kindred were not excluded. A canon, attributed to a Council of Worms[2] (A.D. 868), said that 'the bishop was to have the care of all Church temporalities, and to dispense them as in God's sight, not for himself or for his relations; but that, if any of his relations were poor, he might give them aid. He might dispense to all who were in need; he might himself, if in need, supply out of them his own necessary wants, and also the wants of those brethren who lived with him (*fratrum, qui ab eo suscipiuntur*).'

Poor clerks were admitted to participate in this share, as is plain from a sentence in Hincmar's ordinances of A.D. 874, excluding from such participation priests degraded for certain causes. Of monks, bound by vows of poverty, and often called 'Christ's poor,' I shall afterwards speak.

All these charitable objects were provided for in the Eastern Church, by organised institutions — *ptochia* or '*ptochodochia*'[3] (poor-houses); '*orphanotrophia*' and '*gerocomia*'[4] (houses for orphans and aged persons); and '*xenodochia*'[5] (guest-houses or hospices). They were all under ecclesiastical superintendence, and had churches or

[1] Mansi, vol. viii. p. 347.

[2] *Ibid.*, vol. xv. p. 871. This canon (art. 46) is not in the older copies of the Acts of that council.

[3] Eighth Canon of Chalcedon (*ibid.*, vol. vi. p. 1227), and see Van Espen's quotation from Zonaras (*Opera*, vol. iii. p. 248).

[4] See Van Espen's quotation from Balsamon, Patriarch of Antioch in the twelfth century (*Opera*, ed. 1753-59, vol. iii. p. 249).

[5] Mansi, vol. ii. p. 947.

chapels in or near them. Canons,[1] received in some parts of the East as Nicene (not, however, really made by the Council of Nicæa), directed that there should be in every cathedral city a *xenodochium*, 'set apart for strangers, infirm, and poor,'[2] and that the bishop should choose and set over it a 'brother';—if possible, an anchorite; who was to be called the guardian of the poor (in the Latin translation, *procurator pauperum*); also, that collections should be made for them from all Christians, if the goods of the Church were not sufficient.

The principles of those arrangements were followed in the Western Church. At Rome there was an officer called by the same name, *procurator pauperum;* an office which continued to exist, at least in name, until recent times.[3] Othelon,[4] who wrote in the twelfth century the *Life of St. Boniface*, lamenting over the departure, then general, from the ancient rules for the distribution of Church revenues, said: 'The holy canons, by authority of which tithes are paid, required not that only, but that they should be distributed among the various uses of the Church; and that there should be in some cities and towns guest-houses (*xenodochia*) established, for the support of poor men and foreigners (*peregrini*).' In the eighth century there were houses of entertainment provided for the alms-people of baptismal churches, usually adjoining them; which, from one of the titles of those churches (*matrix ecclesia*), were

[1] These canons were translated from Arabic into Latin, and published A.D. 1551, by the Spanish Jesuit Francis Turrianus.

[2] Canon 70. '*Ut sit in omnibus civitatibus locus separatus peregrinis, infirmis, et pauperibus, qui vocetur xenodochium, id est, hospitium peregrinorum.*'

[3] See Mansi's note, *Concil.*, vol. ii. (to the canons of Turrianus, just cited): '*Sic Romæ vocatur hodie procurator pauperum.*'

[4] Quoted by Kemble, *Saxons in England* (1876), vol. ii. p. 479, note.

called *matriculæ*;[1] and the same name, *matricula*, was also applied to a book,[2] in which the names of those admitted as alms-people of the Church were inscribed. In the ninth century those persons only who had been regularly admitted, or 'matriculated,' as alms-people or bedesmen of the particular church, were recognised as having claims to relief upon the ground of poverty.

The statutes of Corbey, and of some other monasteries, ordered lodging, food, and clothing to be given to those whose names were in the matriculation book; requiring from them in return services to the house, of which they were (in effect) lay brethren.[3] They were to be treated on the same footing with the other servants of the house, and were (with them) to have the first share in every distribution of food. The monks belonging to the house were often themselves called *matricularii*.[4] Alcuin, when Abbot of St. Martin's at Tours, in a letter to Charlemagne[5] (written in A.D. 801), so styled himself. There was an officer of each baptismal church or monastery, like the *procurator pauperum*, charged with the care of the matriculated poor.[6]

Archbishop Hincmar's ordinances of A.D. 858[7] gave injunctions to his commissaries and rural deans, as the foundation of annual inquiries to be made by them in all the mother churches and chapels of the province,

[1] Ducange, *in voce* 'Matricula.' [2] *Ibid.*

[3] Ducange, *in voce* 'Matricularii' (quoting Adelard and Guerard): '*In matriculam ecclesiæ inscripti, sub servitiis quibusdam in monasterio præstandis, inibi tectum, victum, vestitum invenerunt.*'

[4] Hence the modern use of the term 'matriculation,' for admission to universities.

[5] See Haddan and Stubbs, *Councils*, etc., vol. iii. p. 533.

[6] From the name of this office the modern French term for churchwardens (*marguilliers*) is derived.

[7] Mansi, *Concil.*, vol. xv. p. 481 (art. 16, 17).

and of reports to himself. One of these injunctions (already quoted) prescribed the quadripartite division of tithes before witnesses. The next enjoined the priests of the churches to which tithes were payable to admit to matriculation persons suitable to the quality of the place (*ut matricularios habeant juxta qualitatem loci*); 'not cow-herds or swine-herds, but infirm and poor persons, and of the same lordship' (*de eodem dominio*); with an exception in favour of any brother or other relative of the priest, who might be infirm or very poor, whom he was permitted to maintain out of the tithe (*qui de eadem decima sustentetur*).

The same prelate returned to that subject in a charge to the priests of the province, in his synod held at Rheims A.D. 874.[1]

'I have often' (he said) 'admonished you concerning the matriculated, what sort of persons you ought to admit, and how you ought to dispense to them their portion of the tithe. But I have found that there are some who take little heed to our admonition, which indeed is God's own, through our instrumentality, small as we are. Wherefore it is necessary to repeat what I know some to neglect. I forbade you, speaking by God's authority, that any priest should presume, in return for an entry of any name in the book, to require or accept any present (*xenium*), or harvest-work, or other kind of service to himself; or that any one should presume to sell that part of the tithe which is due to the matriculated, and which the faithful, as ransom for their sins, offer to the Lord.'

It appears, therefore, that in Hincmar's time the poor, who had the benefit of a share in the quadripartite division of tithes, were only those whose names were inscribed for that purpose in the 'matriculation' book of the dispensing Church. And from Eadmer's narrative of St. Oswald's life[2]

[1] Mansi, vol. xv. p. 494.
[2] Wharton's *Anglia Sacra*, vol. ii. p. 195.

when in the monastery of Fleury, in the succeeding century, it may be collected that the practice of the diocese of Orleans was then the same; and that this was the mode of administering the 'poor's share' of Church revenues, with which foreigners, visiting the greater Gallican Churches and religious houses (such as Fleury and Corbey), in the ninth century, would naturally become acquainted. 'Before the doors of a certain crypt (at Fleury) twelve poor men were wont, according to ancient usage, to assemble and receive the supply of their daily needs from the church; men of such dispositions, that all were associated together in the study of learning, all were clerks (*ut omnes literarum socii, omnes clerici essent*).' One of these alms-men was selected by Oswald to wait upon and assist him at mass.

It has been intimated that the monks, as 'Christ's poor,'[1] might themselves advance claims to participate in, even to absorb, the 'poor's share;' and it is not doubtful that they did so. The Eastern monks of the fifth century were ordinary sharers in the alms distributed by the bishops:[2] and the same principle was recognised in the West. In the *Decretum* of Gratian,[3] a chapter entitled '*The Clergy are free to grant Tithes to Monks*,' is represented as taken from a letter of St. Jerome to Pope Damasus; though no such letter was really written by that Father. I translate the material parts of it:

[1] Ducange, *in voce* 'Pauperes Christi'; and Selden: 'The distribution of tenths also to the poor according to the owner's free will (which I take to be consecrations or grants to monasteries, for the monks were usually called *pauperes*, and were so indeed by their vow) was expressly complained of, as a great fault of the time, by Pope Innocent III.' (*Hist. of Tithes*, ch. 6, § 2, p. 78, ed. 1618).

[2] See Moreri, *Dictionnaire*, *in voce* 'Moines.'

[3] Pars ii., causa xvi., quæst. 1, cap. 68.

'Inasmuch as whatever the clergy have belongs to the poor, and their houses ought to be common to all, it is their duty to attend diligently to the entertainment of foreigners and strangers (*peregrinorum et hospitum*). Especially should it be their care to lay out as much as they are willing and able, out of the tithes and oblations which they receive, upon convents and guest-houses (*coenobiis et xenodochiis*). For they are free to grant their tithes and oblations and all other benefits (*remedia*) to monks and spiritual persons fearing and worshipping God, and to transfer both the ownership and the use of them from themselves to such religious men (*de jure suo in dominium illorum et usum transferre*); and in the poor to consider not so much poverty as religion (*nec tam in pauperibus paupertatem quam religionem attendere*). As to the question which your Holiness has asked, whether it be possible for secular persons to acquire a right to the use of tithes and oblations, your Holiness knows that it is quite unlawful; the divine authority of the canons of our fathers forbidding it. Wherefore, if things which are known to be of divine right shall have at any time been wrongly detained by such persons, and afterwards have passed to the use of monks and servants of God with the consent of the diocesan bishop, they should all be secured to them, and sustained by firm and sure titles for ever.'

It may be added, that after the time of Gratian the preaching friars regarded so jealously the receipt of tithes or other endowments by the secular clergy, that Gregory IX.[1] found it necessary to forbid them to encourage their hearers to refuse payment of tithes and other things due to churches.

[1] *Sexti Decret.*, lib. iii., tit. xiii., cap. 1: '*Fratribus Prædicatoribus et Minoribus:—Discretioni vestræ mandamus, districtius inhibentes, ne talia, quæ audientes a decimarum, seu aliarum rerum ecclesiæ debitarum, solutione retrahant, vel alias animas corrumpant audientium, in sermonibus vestris vel alibi proponere de cætero præsumatis.*' The Dominican and Franciscan friars (says Selden) 'falsely taught them' (*i.e.* tithes) 'not at all payable but arbitrarily as alms, even since parochial right in them established' (*Hist. of Tithes*, ed. 1618, Preface, p. xiv.) 'By this doctrine' (he adds, in ch. 7, p. 166), 'the Mendicants especially often got them to themselves.'

## CHAPTER IV

### TRANSITION TO THE PAROCHIAL SYSTEM

### § 1. *Private Oratories.*

FROM an early date, private oratories or chapels were built and consecrated upon the estates of powerful laymen.

The rule was, that no one should build such a church before the bishop of the diocese came and publicly set a cross on the ground, and marked out the intended precinct (*atrium*); and the founder was required, by an instrument of gift to be produced before consecration, to make reasonable provision for its lighting and due care, and for the wages of those (*custodes*), who should be put in charge of it.[1]

Such oratories were, for some purposes, private property, of which the proprietor might dispose as he pleased. The Frankfort capitulars[2] (A.D. 794) permitted them to be bought and sold. It was not until a late period, when their character had been changed, that the restrictions upon the rights of founders of churches, stated in very wide terms by Pope Gelasius, and by the ninth Council of Toledo (A.D. 657), were held to be applicable to them. Gelasius[3] had said

[1] Note, Burchard, lib. iii.; Canon of Orleans, A.D. 511 (Mansi, *Concil.*, vol. viii., 363); and see *ibid.*, vol. xv. p. 563, and Baluze, *Cap. Reg. Franc.*, vol. i. p. 1570. [2] (Art. 52), *ibid.*, vol. i. p. 267.

[3] See extracts from two of his decretal epistles, in Gratian's *Decretum*, pars ii., causa xvi., quæst. vii., cap. 26, 27.

that the builder of a church should not, after consecration, have any private right in it, except that of access to public worship, due to every Christian (*præter processionis aditum, qui omni Christiano debetur*). The canon of Toledo[1] is long and special; but its effect is summarised in the gloss of Gratian:[2] 'The founders of churches have the right of protecting them, of taking counsel for them, and of finding priests to serve them: but they have no right to sell them, nor to give them away, nor to use them as their own property.' The canon of the Roman Council held under Leo IV.[3] (A.D. 848-854), which forbade the taking away of a monastery or oratory, canonically erected, 'from the dominion' of the founder (*a dominio constructoris*), against his will, and which recognised his right of patronage, might be reconcilable with either the larger or the more restricted power. Pope Innocent III. (who was in the habit of taking from Gratian his rules of judgment,[4] and who exalted to the highest point ecclesiastical against lay authority), in his decretal[5] to which the rubric, '*Laymen, even Kings, cannot give churches or tithes, nor can a prescription be founded on such grants*,' is prefixed, held that if, in the grant of a church, a layman used such words as 'I give you such a church,' they must be understood only of his right of patronage; and that nothing more would pass.

[1] Mansi, *Concil.*, vol. ii. p. 26.

[2] *Decretum*, pars ii., causa xvi., quæst. vii., cap. 30.

[3] *Ibid.*, cap. 33.

[4] That Pope had a high reputation as a canonist. Van Espen (*Opera*, vol. iii. p. 69) says that he used the *Decretum* of Gratian, as 'the purest fountain of canon law.'—'*Atque in Gratiano contenta sine discrimine aut examine, num sincera vel supposititia sint, integra an mutilata, in decisionum quarum fundamenta assumat, et secundum ista sine ulla hesitatione resolvat*,' etc.

[5] *Decret. Greg. IX.*, lib. iii., tit. xxx., cap. 31. (About A.D. 1212.)

In the ninth century, and later, when the system of lay investitures prevailed, and the see of Rome itself was to a great extent under lay control, the founders of this class of churches practically exercised larger rights. Such churches were liable, like other inheritances, to be divided among co-heirs. At the Council of Chalons[1] (A.D. 813) a complaint was made of scandals resulting from that cause. There were sometimes three or four co-proprietors of the same altar, who quarrelled, and each appointed his own priest. To remedy those evils, the council decreed that in such cases the performance of masses should be interdicted, until all the co-heirs were so far reconciled as to agree in the appointment of one priest, who might do the duty of his office without disturbance. Another ordinance (of uncertain authorship), found in the collections of Benedict the Levite,[2] Regino,[3] Burchard,[4] and Ivo,[5] and which was ascribed by Gratian[6] to Gregory the Great, provided that if, in any case of division and dispute among co-heirs, the bishop's interposition should prove fruitless, it should be competent to him to determine whether he would allow the churches to remain open, or would remove from them the 'relics' by which they were (supposed to be) sanctified. This was converted into a peremptory law by the Council of Tribur[7] (A.D. 895); decreeing that, 'if co-heirs should be in contention concerning a church belonging

[1] Mansi, *Concil.*, vol. xiii. p. 98.

[2] Lib. v., cap. 99 (Baluze, *Cap. Reg. Franc.*, vol. i.)

[3] *De disciplinis Ecclesiasticis*, etc., lib. i., cap. 242.

[4] *Magnum volumen Canonum*, lib. iii., cap. 41.

[5] *Exceptiones Ecclesiasticarum Regularum*, part iii., cap. 45.

[6] *Decretum*, pars ii., causa xvi., quæst. 7, cap. 35. (See, as to all these canonists, Introduction, *ante*, pp. 10 and 19.)

[7] Cap. 32 (Mansi, *Concil.*, vol. xviii. p. 139).

to them in common, the bishop shall order the holy relics to be taken away, and the church to be shut up, until, by common consent, with the bishop's concurrence, they appoint a priest to do the duty, with sufficient provision for his subsistence.'

By Charlemagne's capitular of Salz[1] (A.D. 804), it was enacted, that whoever desired to build a church upon his own property might do so, with the bishop's consent; but under the condition (repeated in later laws)[2] that 'the more ancient churches should not, on that account, lose their tithes or any other rights.'

The great men who built those oratories and chapels, and their vassals or 'villeins' (for whose benefit and convenience they were usually built), frequented them in preference to the older and more distant churches.[3] There was a constant tendency to demand for them increased privileges, and greater independence of episcopal control; and this pressure, long opposed by the bishops, proved at last too strong to be resisted. But the change did not take place until after the death of Charlemagne.

## § 2. *Ordinances of Louis the Simple, and their Results.*

On the accession of Louis the Simple to the empire, the foundations of the future parochial system were laid at Aix-la-Chapelle, in the great Council of A.D. 816.[4] The ordinances there made were agreed to 'for the benefit of the

[1] Baluze, *Capit.*, vol. i. p. 415. [2] *Ante*, p. 62.

[3] Capitular of A.D. 855 (Baluze, vol. ii. p. 352).

[4] Baluze, *Capit.*, vol. i. p. 565; and see his note, vol. ii. p. 1149: '*Ante constitutionem istam decimæ non pertinebant ad ecclesias noviter fundatas, sed ad antiquiores ecclesias.*'

whole church' (*pro utilitate totius ecclesiæ*), by an assembly of bishops, abbots, counts, and heads of great Frank families (*majorum natu Francorum*), from all parts of the empire.

By the fourth article of those memorable laws it was provided that, whatever, since the accession of the Emperor Louis, might have been voluntarily given to the Church by the faithful, and not specially appropriated by the donors, should be divided, in the richer places, into three parts—two for the poor, and one for the clerks or monks; in smaller places, into two equal parts—one for the clergy, the other for the poor. But this division was not to be made when the will of the donors had been expressed to the contrary (*nisi forte a datoribus, ubi specialiter dandæ sint, constitutum fuerit*);—when the donors had given their gifts a particular destination, that destination was to prevail.

The ninth article prohibited the appointment of priests to, or their removal from, the churches of lay founders, without the bishop's authority. But it guarded that prohibition by another, forbidding the rejection by the bishop, on any pretext, of a clerk of good life and sound doctrine, presented by a lay patron for ordination to his own church.

The tenth article required, 'that to every church one entire manse, free from all service, should be assigned; and that the priests appointed to the churches should do ecclesiastical service only for their tithes, for the offerings of the faithful, for their houses of residence, for the precincts or gardens adjoining the churches, and for the necessary manse.' For any endowment in land beyond these, they were to render the same services to the lord of the seignory, as would in any other case be due.

Subject to those requirements, the eleventh article

directed, that every church should have its own priest, if means for his support were provided to the satisfaction of the bishop.

And by the twelfth article (the most important in its consequences, and the greatest innovation upon the earlier laws of all) it was enacted, that *the tithes* arising within new townships, in which new churches were founded, *might be granted to those churches; (sancitum est, de villis novis, et ecclesiis in eis noviter constitutis, ut decimæ de illis villis ad easdem ecclesias conferantur).*

Even in Charlemagne's time, episcopal founders[1] of new churches had, in some cases, granted the tithes of lands belonging to their sees, by way of endowment, to such churches. But, until these capitulars of Aix, there was no legal power for founders, even with the consent of bishops, to do so to the prejudice of older churches. It was forbidden by the Imperial laws[2] already mentioned.

After this new legislation at Aix-la-Chapelle, the endowment of new churches with manses and with tithes by lay founders, with the consent of the diocesan bishops, gradually became common. Districts were assigned to the churches so endowed; and those districts, before the end of that century, acquired the name of 'rural parishes' (*rusticanæ parochiæ*). Under that name Archbishop Hincmar, in A.D. 874,[3] laid down rules for their visitation by his archdeacons.

[1] See the 'Form,' No. 11, of Marculfus (Baluze, *Capit.*, vol. ii. p. 442), by which a bishop, in the seventh year of Charlemagne's empire, with the consent of his chapter, endowed with two manses, and with arable land and a vineyard, a church built and consecrated by him for four specified townships (*villæ*) which were to regard that as the church to which they were to resort for hearing masses and for baptism and preaching, *and to which they should pay their tithes.* See *post*, Appendix H.

[2] *Ante*, p. 62.

[3] Mansi, *Concil.*, vol. xv. p. 494 (art. 1-4 and 7).

By degrees the celebration of all the sacraments and rites of the Church in the churches of those rural parishes, and burials in their consecrated precincts, were allowed by episcopal authority. This change made further legislation necessary, as to conflicting claims to tithes; as to seignorial rights claimed over those endowments of rural parishes which were not expressly exonerated from them by the capitulars of Aix; and as to the subdivision of those parishes themselves.

In the Lombard Laws of Lothair[1] (A.D. 830) there is a provision, that the townships, from which each church was to receive tithes, should be defined by boundaries: (*'Ut terminum habeat unaquæque ecclesia, de quibus villis decimam accipiat'*).

Rodolph, Archbishop of Bourges[2] (A.D. 850), reciting that 'there were some who neglected to give their tithes to their own churches, where they and their servants heard mass,' decreed that 'all should there give their tithes where their children were baptized and where they heard masses, as should appear, in the bishop's judgment, to be suitable to the circumstances of each case.'

The appropriation of the tithes of newly cultivated lands was the subject of a capitular of the Emperor Louis II.[3] (A.D. 867), which provided that the tithes of such lands, when adjacent to those already in cultivation, should be paid to the older church; (which I understand, in this place, to mean the baptismal or other church already existing, which received the tithes of the lands already in cultivation). But if, at a distance of more than four or five miles, any 'worthy person' (*digna persona*) should have recently re-

[1] Baluze, *Capit.*, vol. ii. p. 340. [2] Mansi, *Concil.*, vol. xiv. p. 954.
[3] Baluze, *Capit.*, vol. ii. p. 364.

claimed wild or forest land, and should have built a church there with the bishop's consent, he was to be at liberty, when the new church was consecrated, or afterwards, to provide for it a priest, and to endow it with the tithes of the newly reclaimed lands. A canon to the like effect was made by the Council of Tribur[1] (A.D. 895).

There were in those days some churches, for the maintenance of which, with a priest to serve in them, no adequate provision had been made when they were consecrated. Walter, Bishop of Orleans,[2] in A.D. 858, made an ordinance in his diocesan synod, that the priests of any churches which had not received the endowments required by the capitulars of Aix-la-Chapelle should represent their cases to the bishop, in order that the lords of the seignories (*seniores*) might be prevailed upon to make good that neglect.

The same ordinance recognised the title of those 'seignors' to feudal services, for such lands as might be given to churches in excess of any legal requirements; and two constitutions, one attributed to the Council of Worms[3] (A.D. 868), and the other made by the Emperor Charles the Bald[4] in the following year, made the bishops arbiters between the parochial clergy and their lords, in any case of difference between them as to such seignorial rights.

The subdivision of rural parishes was regulated by the capitulars of Toulouse[5] (A.D. 844). The bishops were forbidden to divide 'the parishes of priests' (*parochias presbyterorum*) for any other consideration than the people's good. If there were a population so distant from the 'principal

[1] Mansi, *Concil.*, vol. xviii. p. 139. [2] *Ibid.*, vol. xv. p. 505.
[3] Art. 58 (which is not in the older manuscripts of the Acts of that Council), *ibid.*, p. 879.
[4] Baluze, *Capit.*, vol. ii. p. 212 (art. 9). [5] *Ibid.*, p. 24 (art. 7).

church' (*ecclesiam principalem*) that women, children, and infirm people could not safely and conveniently resort to it, and yet not so far but that the priest of that church might go there to minister to the people, the parish might remain undivided, and it would be enough, in such a case, to set up an altar (*statuatur altare*) in that place. But if the people did not desire this, or if it could not conveniently be done, the bishop might, after due consideration, divide the parish; making a proper apportionment of duties and charges between the priests of the old parish and the new.[1]

The Gallican bishops appear to have acted in matters of this kind by their archdeacons. Archbishop Hincmar,[2] in A.D. 874, instructed his archdeacons 'not to unite or divide rural parishes for the friendship, or on the solicitation, of any persons; nor to put those churches which were accustomed from old time to have priests of their own, (*quæ ex antiquo presbyteros habere solitæ fuerunt*), under other churches, as if they were chapels; nor to transfer chapels from those churches on which they had been from old time dependent, to other churches.' And he desired a return to be made to him in writing of all those older churches (*quæ antiquitus presbyteros habuerunt*), and of the chapels which had been from old time dependent on them (*capellas antiquitus illis subjectas*).

Decrees of the Synods of Ravenna[3] (A.D. 877), and of

[1] In the modern French law, before the Revolution, when such a division of parishes took place, by the erection of an *église succursale* into the church of a new parish (*paroisse*) or title (*titre*), the whole burden of church repair, including the choir or chancel, was thrown upon the parishioners of the new parish, and not upon the tithe liable to the repairs of the old church (Jouy, *Principes et Usages*, etc., pp. 330-333.)

[2] Mansi, *Concil.*, vol. xv. p. 494 (art. 7).

[3] *Ibid.*, vol. xvii. p. 340 (art. 48).

Metz[1] (A.D. 888), make it clear, that the tithes with which rural parishes were endowed were enjoyed beneficially by the priest-incumbents, and did not fall under any rule or custom of quadripartite, or tripartite, or other proportionate division.

The Synod of Ravenna ordered that every one should pay his tithes 'to that priest, in whose parish, and under the jurisdiction of whose bishop, he lived; he being appointed by the bishop to receive them' (*quia ad hoc recipiendum ab episcopo suo est constitutus*); and that no stranger, priest, or deacon (*levita*), should either carelessly or wilfully seek or accept any gift of these things, which by canonical right belonged to another (*alteri jure canonum debita*).

The Synod of Metz forbade the lord of any seignory (*nemo seniorum*) to take for himself any portion of tithes, (*de decimis aliquam portionem*); 'the priest alone, who served in that place to which of old time the consecration of the tithes had been made (*ubi antiquitus decimæ fuerunt consecratæ*), was to receive them without deduction, 'for his own support, and for keeping in good order the lights and buildings of the church, and providing himself with the priestly vestments, and other things of necessary use for his ministry;' (*in sui sustentationem, et ad luminaria concinnanda et basilicæ ædificia, vestimenta quoque sacerdotalia, et cætera utensilia suo ministerio congrua, obtinenda*).

Here we observe two things;—first, the use by that council of the term *consecration*, in the same sense in which Selden used it, to signify the endowment of particular churches with tithes; and, secondly, the Continental rule[2]

[1] Mansi, *Concil.*, vol. xviii. p. 78.

[2] See Coke, 2nd *Institute*, p. 653. Van Espen, *Jus Univ. Canon.*, pars ii., sect. 2, cap. 6, §§ 7, 10 *et seq.*

of throwing upon the parish priest, who received the tithes, the obligation to keep the church in repair and find himself in vestments, etc.; which rule in England[1] never prevailed, except so far as the rectors of parishes, receiving great tithes, were liable for the repair of the chancels of their churches.

### § 3. *Modern Roman Canon Law.*

In the modern canon law of the Roman Church (the *Decretum* of Gratian, and the constitutions of later Councils and Popes), the ancient quadripartite[2] division of tithes or other Church revenues is hardly (I think only twice[3]) mentioned; and then incidentally or argumentatively, and not as still in practical force and operation. When the churches of rural parishes became endowed with tithes, and those tithes were subtracted from the diocesan funds dis-

[1] Coke, 2nd *Inst.* p. 653; and Selden, *Hist. of Tithes*, Preface, p. v., ed. 1618. The modern French law, before the Revolution, threw upon the tithe-owner (where there was no sufficient fabric fund arising from endowments) the repair of the chancel or choir only of the fabric of the church of an ancient parish, and the obligation of supplying lights, vestments, and ornaments;—an ecclesiastical corporation, if *gros decimateur*, being liable in priority to a lay improprietor, owner of 'feudalised tithes.' (See Jouy, *Principes et Usages concernant les Dîmes*, Paris 1775, cap. 10, § 2, p. 297.) The repairs of the nave of the church were a burden on the parishioners.

[2] Of tripartite or any other mode of division than the ancient Roman, there is no mention at all.

[3] *Decret.*, pars ii., causa xvi., quæst. 1, cap. 63; and causa xxv., quæst. 1 (Initial position of the First Party). And see Van Espen, *Jus Univ. Canon.*, pars ii., sect. 2, tit. i., cap. 6, § 4: *Quamvis hodie non fiat ea reddituum ecclesiasticorum divisio in partes, quarum tertia aut quarta cedat fabricæ*, etc. In Dauphiné there was in force, as late as A.D. 1768, a special custom to apply one twenty-fourth part of the tithes for the benefit of the poor of the parishes in which the tithes arose. (Jouy, *ubi supra*, cap. 10, § 37, p. 337.)

tributable under the ancient system, the old baptismal churches naturally sought exoneration, as to the tithes and other endowments which they still retained, from deductions and charges which might have left the wants of their clergy and religious services insufficiently provided for. And, accordingly, they obtained from Rome grants of privileges, authorising them to retain for their own uses the tithes which they received. The validity and effect of such Papal grants to baptismal churches was examined by Gratian in the *Decretum*,[1] under the form of a controversy between a monastery, setting up a Papal exemption from tithes, and a baptismal church, claiming tithes for its own benefit out of lands belonging to that monastery. In the argument for the monastery, the rule of quadripartite division was insisted on; no one (they contended) was more bound than the Pope to observe 'the decrees of the holy canons;' and the conclusion was drawn, that the privilege granted to the clergy of the baptismal church did not entitle them to claim the tithes for themselves (*quod auctoritate illius privilegii decimas sibi ex integro vendicare non valeant*).[2] But Gratian's determination[3] of the point was, that the ancient canonical rules, as to tithes or other church property, were subject to change, dispensation, and exception, according to the judgment of the Holy See; and, therefore, that 'the clergy of this baptismal church, by virtue of their privilege, might make good their claim to the whole tithes of their "diocese"' (*clerici ergo hujus baptismalis ecclesiæ, privilegii auctoritate muniti, suæ dioecesis decimas sibi ex integro vendicare valent*), except in the possible case of a bishop being compelled by 'some

[1] Pars ii., causa xxv. [2] Initial position of the First Party.
[3] Conclusion of quæst. 1, cap. 16.

extreme necessity' (*summa necessitate*) to take his fourth part, and of proof being made that the clergy of the baptismal church had more than they wanted; (*et illi superabundare monstrentur*).

Before the end of the twelfth century, the endowment of parish churches with tithes had become so general, that the burden of proof was thrown upon those claiming against them. In the diocese of Beauvais a question arose as to the tithes of newly-cultivated lands in parishes, in which some churches (baptismal or conventual), or other ecclesiastical persons, had from ancient time a right to the perception of tithes; (*ad quasdam ecclesias vel personas ecclesiasticas ab antiquo pertineat perceptio decimarum*). The determination of Innocent III.[1] was, that, 'inasmuch as, of common right, the perception of tithes belonged to the parochial churches' (*perceptio decimarum ad parochiales ecclesias de jure communi pertineat*), their title to the tithes of lands newly brought into cultivation was clear, unless reasonable proof could be made, by those who received the other tithes, that their title did extend to the newly-cultivated lands.

The system, therefore, of modern parishes, endowed (generally) with tithes, had then become well established. I cannot better conclude this narrative, than by a summary of the course and results of this change, taken from the work of Van Espen; to which I shall add an opinion, given in France early in the eighteenth century, to the Chancellor d'Aguesseau, by magistrates learned in this branch of law, whom that great jurist had thought fit to consult. Van Espen says:

'As time went on, and as the fidelity and integrity of the bishops and their officers in the dispensation of church revenues

[1] *Decret. Greg. IX.*, lib. iii., tit. xxx., cap. 29.

declined, many dissensions and quarrels arose between the clerks to whom distribution was to be made, and those to whom the duty of making the distribution belonged. The earliest claim asserted by the priesthood was to the offerings made in their own churches; and when the right to receive and retain these for his own use had devolved upon the priest, separate titles to other kinds of church property began also to be generally acquired; and a particular portion of lands, of which he was to receive the profits for his own use, began to be assigned to the priest of each church. This, however, did not happen all at once everywhere; nor was the practice introduced by the decree of any council; it passed gradually from one to another church.[1]

'In the end it became a legal axiom, that the parish priests had a valid claim to the tithes, oblations, and other church revenues arising within the bounds of their respective parishes; and, in this way, the right to receive those profits became annexed, not to particular persons, but to churches, and the titles to them. He who had the title acquired also the right to receive the profits of all that belonged to that title. This system, at last, became universal. A further consequence was, that the title acquired the name of *benefice*, because he who obtained it obtained at the same time the right to receive and enjoy its fruits; and also, because the ecclesiastical office or ministry was regarded as the principal thing, and the right to receive and enjoy the fruits and profits as its accident. Canonists, retaining the old designation of "benefice" (which signified an usufructuary right granted to the clergy as "soldiers of the Church"), were accustomed to define it as "a perpetual right granted by the authority of the Church in respect of a spiritual office, to receive and enjoy the fruits, of whatever kind, of ecclesiastical property or things dedicated to God." Divines preferred to say, "A perpetual right of ministering in the Church, granted by the bishop's authority, and having, as incident to it, the right of receiving and enjoying the fruits."'[2]

In another place[3]—'The word *peculium* probably came to

[1] Van Espen, *Jus Univ. Canon.*, pars ii., sect. 3, tit i., cap. 1, § 8.

[2] Pars ii., sect. 3, tit. i., cap. 1, §§ 11-14.

[3] Pars ii., sect. 4, tit. i., § 2.

be applied to church property granted to clerks for their own use, after the goods of the church had become, by the erection of benefices, divided into certain portions, annexed to particular titles, and separated from the general mass. It acquired that name by analogy to the *peculium* of the Roman law, which signified property acquired by a slave separately from that of his master, by the master's leave. . . . And since, under this modern system, every beneficed clerk has as ample power of administration, and as free a use, in respect of the portion of goods annexed to his title, as bishops ever had over the estates and goods of their churches, it is not strange that the beneficed clerk should be regarded as the owner (*dominus*) of his ecclesiastical revenues, and should be commonly spoken of as having the ownership (*dominium*) of them, or as taking them for his own; although, in truth, he is but put in charge of them. He obtains over them a power of disposition (including the right to apply them to his own use), so absolute, as to make him accountable for his stewardship to God alone.'[1]

A question arose before the Chancellor d'Aguesseau, between a bishop entitled to the great tithes of a certain parish and the *curé* of that parish, as to the tithes of lands within the parish, newly brought into cultivation. The magistrates, consulted by the Chancellor, gave their opinion in the bishop's favour, for these reasons:[2]

'In the ancient state of the Church all ecclesiastical goods were in the power of the bishop, who distributed them to the priests and other ministers of the Church. The division which succeeded to that ancient state of things irrevocably assigned to each ecclesiastical function and office certain portions of the goods which had composed that common mass; and this introduced what at the present day are called *titles to benefices*. At the time of that division the bishops, to form their separate estates (*leur manses particuliers*), reserved to themselves certain domains and tithes, which they continued to possess by

[1] Pars ii., sect. 4, tit. i., § 23.

[2] Jouy, *Principes et Usages*, etc., cap. 7, § 9, pp. 226-228.

the same title as when the division was made. It is impossible, under these circumstances, to say that the *curés*, who got their own proper share (*leur partie contingente*) of the common goods, can establish against the bishops a right, by reason of their churches (*de leur clocher*), to receive all the tithes of their parishes. That original state of things assures to the bishops a right in perpetuity, as against the *curés*, to the tithes of each parish so situated. This right of the bishops is not an exemption; for the right of a tithe-owner not to pay the tithe of his own landed property cannot be called exemption from tithes.'

# ANCIENT FACTS AND FICTIONS

## PART II.—ANGLO-SAXON

# CHAPTER I

## FIRST PERIOD—FROM AUGUSTIN TO THE DEATH OF ARCHBISHOP THEODORE

### § 1. *Preliminary.*

I SHALL refer to the general history of the Anglo-Saxon Church so far only as it throws light upon the particular subjects which it is my object to examine. That history may be divided into four periods. The first (to which the present chapter relates) occupies nearly a century, from the coming of Augustin in A.D. 596 to the death of Archbishop Theodore in A.D. 690. It is that of the first plantation of the Church by Augustin and his successors,—all but one of them sent, like himself, from Rome. The second begins with Brihtwald, the first of a long line of native Anglo-Saxon primates; and ends with the restoration of the see of Canterbury, in A.D. 803, from the position of diminished authority to which it had been reduced by King Offa. This was a period of vigorous, independent growth. The third and longest period, extending over nearly 140 years, from the Council of Cloveshoo (where that restoration was effected) to the primacy of Archbishop Odo (A.D. 841), was one of decay. The fourth and last, from A.D. 841 to the Conquest (A.D. 1066), was marked by a revival of learning, and the establishment of monastic ascendency.

## § 2. *The Original British Church.*

If I may seem to pass by the history and the labours of the original British Church, it is not because I am insensible to the interest of that subject; but because the questions of ecclesiastical organisation, customs, and laws, with which I wish to deal, are Anglo-Saxon, not British. Speaking generally, the local succession and organisation of the Anglo-Saxon Church was from Augustin; it was not a continuation of the succession or organisation of the ancient British Church. It arose out of the conversion, by missionary enterprise, of new heathen nations, which had obtained possession of the greater part of England, and had driven into the remoter parts of the island that portion of the British race which they did not exterminate or enslave. And at the outset there was a difference, not of organisation and succession only, but also of rite; the British Church having its peculiar customs,[1] of which there was on both sides a disposition to exaggerate the importance.[2] By degrees, the natural law, by which the weaker is attracted to the stronger, prevailed.[3] The organisation which had for its centre the see of Canterbury was the stronger, ecclesiastically, from its nearer relation to the metropolis of Western Christendom; and temporally, because, according to the measure of the success of its missionary efforts, it acquired the support of

[1] See Haddan and Stubbs, *Councils*, vol. i. pp. 152-155.

[2] *Ibid.*, pp. 108, 126, notes; and see Theodore's 'Penitential,' lib. ii., cap. 9 (*ibid.*, vol. iii. p. 197).

[3] 'In A.D. 731, all the Scottish and Pictish, and probably the Cornish, Churches had yielded; but the Welsh still retained their own Easter' (*ibid.*, p. 62, note). The Welsh Churches began to adopt the Roman Easter, etc., between A.D. 768 and 777 (*ibid.*, vol. i. p. 204).

the governing races. The result, when distinctions of rite had disappeared, was not to make the new organisation fall into the old, but the old into the new.

On the other hand, there is no reason to doubt that the influence of the two converging traditions of historical Christianity in this island was to some extent reciprocal; especially when the communications[1] of both with the Scottish and Irish Churches (kindred to the British) are taken into account. Some customs of the Anglo-Saxon Church seem to have been borrowed[2] from the British; and British bishops took part in the conversion, or reconversion after relapses into heathenism, of some of the Anglo-Saxon kingdoms; and also in consecrations,[3] by which, in particular dioceses, the succession of the Anglo-Saxon episcopacy was kept up. These relations to the British, Scottish, and Irish Churches contributed to give to the Anglo-Saxon Church a character of its own, and to modify or retard the assimilation of its customs and institutions to those of Continental Churches.

As to the revenues and territorial arrangements of the ancient British Church, little is known. There was a Welsh custom,[4] when Giraldus wrote his 'description of Wales' in the twelfth century, of paying an extraordinary tithe, which was divided between the bishop and the 'baptismal church' (*ecclesiæ suæ baptismali*), in the proportion of one-third to the former and two-thirds to the

[1] Haddan and Stubbs, *Councils*, vol. i. pp. 115, 116, note; p. 121, note; and see Bede, *Hist.*, lib. v., cap. 22.

[2] Haddan and Stubbs, *Councils*, vol. i. p. 140.

[3] *Ibid.*, p. 124; and vol. iii. p. 106 note, 109.

[4] *Descr. Wall.*, lib. i., cap. 18 (quoted by Baluze, *Capit.*, vol. ii. p. 1065, note). See, as to Welsh baptismal churches, the Laws of Howel the Good (Haddan and Stubbs, *Councils*, vol. i. pp. 241, 247).

latter, on certain special occasions, such as marriages, journeys, or a change of life undertaken by advice of the Church. As to the antiquity of that custom, or as to other customs of the ancient Welsh Church, relating either to tithes or to parochial arrangements, before the end of the eleventh century, we have no certain information. In the 'Laws of Howel the Good,' which belong to the tenth century (and were later than the cessation of the ritual differences which had estranged the Welsh Church from the Anglo-Saxon), tithes are mentioned; in a manner, however, from which we derive little light. In two of the three forms of that code, the 'priest of the household' (second in rank of the royal officers) was to have a third of the king's tithe,[1] and the 'priest of the queen' a third of the queen's tithe;[2] the 'priest of the household' was also to have the tithe of the household.[3] The code of the south-western province,[4] imposing fines by way of penalty upon any persons 'fighting within the churchyard,' gave all those fines to 'the abbot' and 'the priests and canons' of the church—from which the inference arises, that at the time when those laws were made, the churches in Wales which had churchyards or burial-grounds were conventual.

### § 3. *Gregory the Great, as to Church Revenues in England.*

Augustin and several of his coadjutors were monks; not, however, of the Benedictine order founded in Italy during the earlier part of the sixth century, as has often been asserted. Before that time there were monks and monasteries, and monastic vows; there were famous monasteries in

[1] Haddan and Stubbs, *Councils*, vol. i. pp. 227-231.
[2] *Ibid.*, p. 235. [3] *Ibid.*, p. 227. [4] *Ibid.*, p. 243.

Wales, in Scotland and its islands, and in Ireland. But Benedict was the first founder of a regular order of monks, living apart from others, and governed by one definite system of positive rules. The Roman missionaries, when they effected their settlement at Canterbury, did not found a Benedictine monastery;[1] they lived together as a college of clergy, the germ of the future chapter of Canterbury Cathedral; which, until a time later than Dunstan, consisted not of monks but of canons, under rules less austere and more flexible than that of St. Benedict. Augustin stated to Gregory several questions on which he desired instructions; one of them, as to the diversity of the customs of churches; and Gregory's answer allowing that diversity, and advising Augustin to decide for himself what might be best and most suitable for the edification of his converts, without holding himself bound by the rules or customs of Rome, has been elsewhere mentioned.[2] The answer given to Augustin's first question,[3] which related to the distribution of the offerings of the faithful, was in conformity with that principle.

'As to bishops' (it was asked), 'how should they live with their clerks? Into what portions should the offerings made by the faithful at the altar be divided? How should the bishop conduct himself in the church?' The answer (after referring to St. Paul's Epistle to Timothy as to the conversation and behaviour suitable to bishops) was:

'It is the custom of the Apostolic See to instruct bishops at the time of their consecration, that of all revenues of every kind (*de omni stipendio quod accedit*) four portions should be made: one for the bishop and his "family," for hospitality's

[1] See Hook's *Lives of Archbishops*, vol. i. p. 34 (3rd ed. 1875).
[2] *Ante*, p. 26. [3] Bede, *Hist.*, lib. i., cap. 27.

sake, and the entertainment of others; one for the clergy; a third for the poor; the fourth for repair of churches. But inasmuch as you, my brother, who have been trained in the monastic rules, ought not to be separate from your clergy, you should institute in the English Church, brought so lately by God's help to the faith, the same manner of administration (*conversationem*) which was in use by our fathers in the very first infancy of the Church (*initio nascentis ecclesiæ*), in which "no man of them said that ought of the things which he possessed was his own; but they had all things common." But if there are clerks not in holy orders who cannot live single, they should take to themselves wives, and receive stipends outside. For we know that of the same fathers, of whom we have just spoken, it is written that "distribution was made to every man according as he had need." Their payment should be considered and provided for, and they should be kept under ecclesiastical rule, so as to live good lives, and attend to psalm-singing, and keep, by God's help, heart, tongue, and body from all things unlawful. But as for making portions, or showing hospitality, or performing deeds of mercy, what need can there be to speak of such things to those who live in community, when all that they have, beyond their own needs, ought to be applied to pious and religious uses, as the Lord the master of us all teaches? "But rather[1] give alms of such things as ye have" (*quod superest date eleemosynam*), "and all things are clean unto you."'

To suggest that Gregory by this answer intended to recommend to Augustin the Roman rule of quadripartite division is to contradict his words. The offerings in question were those made at the altar of a church, served by a body of men living together as monks in community, with inferior clergy not bound by monastic vows under them. They were first to provide out of their offerings for their common wants and those of their dependent clergy. Everything beyond what might be necessary for these purposes was to be used as they should judge most convenient, without

[1] Luke xi. 41.

any partition, for hospitality and works of charity and mercy. It would not indeed have been inconsistent with that advice, if at some later period, and under altered circumstances, the Anglo-Saxon Church had adopted either the quadripartite or any other rule of division. On that point Gregory's instructions left them free; they might either permanently retain the same latitude of discretion which had prevailed generally in Christendom for more than four hundred years from the time of the Apostles, or they might introduce the Roman or some other definite rule. That they did so, is not a thing to be presumed without evidence. As to the quadripartite division, there is no documentary or historical evidence of any kind which can be alleged as showing its acceptance anywhere or at any time in England. That some other definite rule should be adopted in preference was not, perhaps, *à priori* probable; but there are documents (belonging to the fourth and last period of the Anglo-Saxon Church) which will require examination when we come to that period; from which some have concluded that there was in this country, then or earlier, a tripartite rule of division. In that opinion I do not agree; but for the present it is sufficient to say, that nothing of that kind can be alleged of earlier date than King Edgar's (or, more probably, King Ethelred's) reign. Whelock,[1] the Cambridge editor of Bede in the seventeenth century, connected the name of Theodore, seventh Archbishop of Canterbury, with one of the documents to which I have referred. On that point it is not necessary, and it would not be convenient, to anticipate here what may be proper to be said hereafter.

[1] Bede's *Hist.* (Cambridge 1644), p. 358; Whelock's note.

## § 4. *Tithes.*

The earliest notice of tithes in any document belonging or relating to the Anglo-Saxon Church is in the 'second book'[1] of a collection of answers or precepts, said to have been given to inquirers by Archbishop Theodore, on a series of ecclesiastical questions. That collection appears to have been made after Theodore's death by a compiler calling himself 'a disciple of the Umbrians,'[2]—probably a student of theology in one of the Northumbrian schools, at Wearmouth or elsewhere in the province of York. Wasserschleben[3] and the late Mr. Haddan and Bishop Stubbs[4] have agreed in accepting it as authentic; I shall, on their authority, assume it to be so. It is divided into two 'books,' each containing chapters arranged according to subjects — the first book 'Penitential,' the second of a different character. The precepts so ascribed to Theodore make no pretension to the character of laws or canons: they represent at the most his pastoral teaching upon the points to which they relate. Some of them (as to re-baptism,[5] divorce, and re-marriage[6]) appear to be at variance with the received doctrine of the Roman and other churches.

The effect of the articles as to tithes (in bad Latin, and perhaps corrupt) is this—(1) That no priest is bound to

[1] Haddan and Stubbs, *Councils*, etc., vol. iii. pp. 191, 203.

[2] *Ibid.*, pp. 173, 175 (and see vol. i., Preface, xiv.)

[3] *Die Bussordnungen*, etc. (Halle 1851).

[4] *Ubi supra.*

[5] Lib. ii., cap. 2, § 12 (Haddan and Stubbs, *Councils*, vol. iii. p. 192); and compare lib. i., cap. 10, § 1 (*ibid.*, p. 185).

[6] Lib. ii., cap. 12, §§ 5, 8, 19-24 (*ibid.*, pp. 199-201). Compare Howel's Welsh Marriage Laws (*ibid.*, vol. i. pp. 249, 251).

pay tithes (*presbitero decimas dare non cogitur*);[1] (2) That in gifts to the Church (*tributum ecclesiæ*) the custom of the province should be observed; but so, that no force be put upon the poor as to tithes or anything else (*ne tantum pauperes inde, in decimis aut in aliquibus rebus, vim patientur*);[2] (3) That it is not lawful to give tithes, except to the poor and strangers, or laymen to their own churches (*decimas non est legitimum dare nisi pauperibus et peregrinis, sive laici suas ad ecclesias*).[3]

The first of these articles occurs in a chapter relating to the powers, duties, and obligations of bishops, priests, and deacons, and headed, '*Of the three principal degrees of the Church*'; the other two in the concluding chapter, '*Of divers questions.*' They are negative rather than positive: they put the payment of tithes on the footing of custom, depending for its observance upon episcopal or clerical influence rather than ecclesiastical censures. Of a division into portions between bishop, clergy, fabrics, and poor, or for any of those objects, they afford no indication;—rather the reverse. What were the churches described as those of laymen, to which tithes might be paid by them, is not clear; they might be oratories built upon their estates, or (as I should rather be disposed to think) those conventual or baptismal churches whose public ministrations they ought properly to have attended.

In the *History* of Bede there is only one passage making mention of tithes. This occurs in the account which he gives of Bishop Eadbert,[4] St. Cuthbert's successor at Lindisfarne; 'a man remarkable for his knowledge of the

[1] Haddan and Stubbs, *Councils*, vol. iii. p. 191 (lib. ii., cap. 2, § 8).
[2] *Ibid.*, p. 203 (lib. ii., cap. 14, § 9).
[3] *Ibid.* (lib. ii., cap. 14, § 10).
[4] Bede, *Hist.*, lib. iv., cap. 29.

Scripture, and his observance of the divine commandments, and (most of all) for his alms-deeds, which were such that, in every year, he gave to the poor a tithe, not only of his beasts, but of all his corn and fruits of trees, and of his garments also.' Bede evidently regarded this as an instance of more than ordinary virtue.

### § 5. *Ecclesiastical Organisation.*

Gregory the Great considered it to be within his power (whether as founder of the Anglo-Saxon Mission or as Patriarch of the West, for he repudiated the title of 'Universal Pope') to regulate for all Britain the future episcopal organisation.[1] This he did by conferring on Augustin himself, during his lifetime, the primacy over the whole island, directing him to ordain for his own province twelve bishops, and to consecrate and send to York another bishop, who, after the conversion of that city and the country near it, should himself ordain twelve other bishops, and become a metropolitan, receiving the pall, but being subject, as long as Augustin lived, to his superior authority. After Augustin's death, London was to become the metropolitan see of the southern province, without any superiority over the metropolitan of York; each metropolitan taking precedence of the other according to the date of his consecration.

These instructions were not acted upon. The see of Canterbury, if not by the positive appointment of later Popes, by a practice to which they gave such sanction as was implied in sending the pall to Augustin's successors,

[1] Letter of Gregory to Augustin (22nd June A.D. 601), sent with pall (Bede, *Hist.*, lib. i., cap. 29; Haddan and Stubbs, *Councils*, vol. iii. pp. 29, 30).

retained its metropolitan character, which was never transferred to London; and it also retained (though without any practical assertion until Theodore's time[1]) the primacy over all England. The scheme of two archbishops and twenty-four bishops was not capable of being at once realised; the heathen must first be converted, and some *modus vivendi* must be arrived at with the remnants of the British Church; which was never done at all as to the regions north of the Forth and Clyde, nor (in Anglo-Saxon times) as to Wales; and was only done gradually in other parts of England. The only bishoprics established by Augustin himself (besides Canterbury) were Rochester and London. It was not till the time of his fellow-labourer and third successor, Justus, that the first steps were taken for the conversion of the country beyond the Humber. Paulinus[2] was then (A.D. 825) consecrated to York, and he received the pall (which was not sent to any of his successors in that see before Egbert, in the middle of the next century); but he consecrated no other bishops for the northern province.

On the accession of Honorius to the archiepiscopate in A.D. 627, there were thus four bishoprics only of the Anglo-Saxon rite in the island; and even of these, one (London) was practically in abeyance, for the kingdom of Essex had relapsed into heathenism, and had expelled its bishop, Mellitus, some years before;[3] and the same thing not long afterwards happened in Northumbria, from which Paulinus also was expelled.[4] Of the kingdoms of the (so-called) Heptarchy, East Anglia, Wessex, Mercia, and Sussex were still heathen. Under Honorius, the Kings of East

[1] Bede, *Hist.*, lib. iv., cap. 2.
[2] Haddan and Stubbs, *Councils*, vol. iii. p. 75.
[3] *Ibid.*, p. 66.
[4] *Ibid.*, pp. 86-88.

Anglia and Wessex were converted, and two new sees[1] were erected, at Dunwich in Suffolk, and Dorchester in Oxfordshire; the latter see being soon afterwards, during the same primacy, removed to Winchester.[2] The conversion of Mercia was begun in the time of the next primate; not, however, under his authority, but by Finan of Lindisfarne, who was of the British succession,[3] and it was during the vacancy of the see of Canterbury, after that archbishop's death, that another new bishopric was established for Mercia.[4] Thus, when Theodore succeeded to the primacy, there were five suffragans only under Canterbury, and one bishop only of the Anglo-Saxon Church in the northern province.[5]

Theodore was the first to assert and exercise, with the assent and support of the rulers of the professedly Christian kingdoms on both sides of the Humber, and their subjects of the Anglo-Saxon rite, the authority of primate and metropolitan of all England;[6] and he formed the design of subdividing the greater sees. He assembled at Hertford[7] (A.D. 673) a general synod of the Church, and proposed for

[1] Haddan and Stubbs, *Councils*, vol. iii. pp. 88-91.

[2] *Ibid.*, p. 127, note.

[3] *Ibid.*, pp. 93-98; and Hook, *Lives of Archbishops*, vol. i. p. 120.

[4] Bede, *Hist.*, lib. iv., cap. 3; Haddan and Stubbs, vol. iii. p. 96. Dean Hook says that the first Mercian see was at Repton, and that it was removed to Lichfield under Theodore (*Lives of Archbishops*, vol. i. p. 121).

[5] 'The whole of England, except Kent, East Anglia, Wessex, and Sussex, was, at the beginning of A.D. 664, attached to the British Communion, and Wessex was under a bishop, Wini, ordained in Gaul, and in communion with British bishops (Bede, lib. iii., cap. 28). Sussex was still heathen. So that Kent and East Anglia alone remained completely in communion with both Rome and Canterbury.' (Haddan and Stubbs, vol. iii. p. 106, note.)

[6] Bede, *Hist.*, lib. iv., cap. 2.

[7] *Ibid.*, cap. 5.

its acceptance, amongst other things, a resolution to the effect 'that the number of bishops should be augmented as the number of believers increased.'[1] This, after discussion, was left undecided; probably because it encountered opposition from the Bishop of Lichfield, who was present, and was known to be unacceptable to Wilfrid of York (a man of great zeal and energy, and tenacious of power), who was absent, but represented by proxies. Theodore, however, did not relinquish his design. He procured the removal[2] of both those bishops from their sees; and with the concurrence of the civil rulers of Northumbria, East Anglia, and Mercia, he established in the north two new bishoprics, Hexham and Lindisfarne,[3] and in the south five (if not six)—Elmham, Lindsey, Hereford, Worcester, and Leicester.[4] Whether he did or did not then revive the see of Dorchester in Oxfordshire is a controverted point.[5] In Wessex he did not himself divide the see of Winchester; but it is probable[6] that he contemplated its division after the death of the then bishop, Heddi, who was his friend, and who survived him; dying in, or shortly before, A.D. 705; when the see of Sherborne was established.[7] The kingdom of Sussex continued heathen till A.D. 684–86, when its king and many of the people were

[1] Bede, *Hist.*, lib. iv., cap. 5 (art. 9); Haddan and Stubbs, *Councils*, vol. iii. pp. 120-122.

[2] As to Winfrid, the deposed Mercian bishop, see Wharton, *Anglia Sacra*, vol. i. p. 423; and Bede, *Hist.*, lib. iv., cap. 5. As to Wilfrid of York, *ibid.*, cap. 12; and see his *Life*, by Eddius (Gale, *Script. XX.*, cap. 24-33); and Bede, *Hist.*, lib. v., cap. 19.

[3] *Ibid.*, lib. iv., cap. 12; Haddan and Stubbs, vol. iii. pp. 125, 126.

[4] Wharton's *Anglia Sacra*, vol. i. *ubi supra* (A.D. 676, 678, 679); Haddan and Stubbs, vol. iii. pp. 127-130; Bede, *Hist.*, lib. iv., cap. 5; Florence of Worcester, *App. ad Chron.*

[5] Haddan and Stubbs, *Councils*, vol. iii. p. 130, note.

[6] *Ibid.*, pp. 126, 127, note.

[7] *Ibid.*, pp. 267, 275, 276.

converted by Wilfrid,[1] who took charge of it at that time as bishop; but it was not till A.D. 711, after Theodore's death, that Selsey became the seat of a settled bishopric for that kingdom.[2]

The history thus summarised will enable any one to judge of the probability of the statements, for which there is no ancient authority, but which were made by chroniclers of later ages, and have been repeated by more recent writers, as to the introduction into England of what is now known as the parochial system,—by Honorius according to some; according to others by Theodore;—in either case, more than a century before the foundations of that system were laid on the other side of the Channel, by the capitulars of Louis the Simple at Aix-la-Chapelle.[3]

The author of the tradition ascribing the origin of that system to Honorius appears to have been Archbishop Parker, or Josceline his secretary, to whom Selden[4] ascribed the authorship of the work commonly attributed to that archbishop; rightly calling it a 'History of the Archbishops of Canterbury'; though its title is 'Of the antiquity of the Church of Britain.'[5] It is not improbable, that the archbishop may have prepared the materials for that work, from the great collection of monastic and historical manuscripts which the dissolution in his time of the religious houses enabled him to make, and which he bequeathed to Corpus Christi College, Cambridge; and that he may have employed in their arrangement the hand of Josceline, which is seen in marginal and other annotations on some of those manuscripts, and also on others belonging to the Cottonian

[1] Bede, *Hist.*, lib. iv., cap. 13. [2] *Ibid.*, lib. v., cap. 18.
[3] *Ante*, p. 85. [4] *Hist. of Tithes*, ch. 9, § 3.
[5] First published A.D. 1572 (three years before the archbishop's death).

collection. The passage as to Honorius,[1] in this work (whether Parker's or Josceline's), is:

'He not only placed bishops over the Church, as chief keepers of its bulwarks, but he was also the first who, dividing his province into parishes, appointed ministers unto them (*neque solum episcopos, tanquam superiores turrium custodes, ecclesiæ superimposuit, sed etiam provinciam suam primus in parochias dividens, inferiores ministros ordinavit*); whom also he frequently instructed and exhorted, that they should teach God's people, gently and patiently, not by their doctrine only, but also by the goodness of their lives; knowing that unbelievers are thus more easily converted, than by severity of reproof or austerity of manners.'

To the same source may, with great probability, be traced a statement to the same effect in Stow's *Annals*,[2] a work published soon after that of the archbishop or his secretary. Stow was, like Josceline, a learned antiquary, and made large collections from ancient documents; and Archbishop Parker was his patron. Under the year A.D. 640 (when Ercombert, King of Kent, is stated by him to have 'first suppressed the temples of the idols'), he said:

'It is recorded in the antiquities of Christ's Church in Canterbury, that about this time Honorius, Archbishop of Canterbury, divided his province into parishes.'

Camden,[3] in the chapter of his *Britannia* which relates to 'the division of Britain,' has a passage to the like effect:

'As to the Ecclesiastical Government, after the Bishop of Rome[4] had assigned to each presbyter his church, and set them

[1] *De Antiquitate*, etc., p. 52 (ed. 1605).

[2] Page 59 (Howes' ed. 1631). [3] Vol. i. p. ccxxviii. (ed. 1722).

[4] It has been seen, in the first part of this work, that the modern system of parishes, on the Continent of Europe, did not grow up till much later.

Anglia and Wessex were converted, and two new sees[1] were erected, at Dunwich in Suffolk, and Dorchester in Oxfordshire; the latter see being soon afterwards, during the same primacy, removed to Winchester.[2] The conversion of Mercia was begun in the time of the next primate; not, however, under his authority, but by Finan of Lindisfarne, who was of the British succession,[3] and it was during the vacancy of the see of Canterbury, after that archbishop's death, that another new bishopric was established for Mercia.[4] Thus, when Theodore succeeded to the primacy, there were five suffragans only under Canterbury, and one bishop only of the Anglo-Saxon Church in the northern province.[5]

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[6] Bede, *Hist.*, lib. iv., cap. 2.

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chaplains or his *clerus*, residing for the most part in those elder times with him at his bishopric, then, clearly, Honorius was not the first that made division of them. *Such* kind of *parochiæ* are even near as ancient as bishoprics; and, questionless, in Augustin's time. How could, otherwise, God's service be orderly had in the infancy of the Church? And, whenever several churches for Christian service, or other places for holy assemblies began, then began such *parochiæ*. . . . If, on the other side, *parochiæ* be taken for what it is usually understood, that is, for such limits as now make parishes, bounded as well in regard of the profits received from the parishioners (due only to the minister of that church), as of the incumbent's function and residence,—how will that stand with the community of ecclesiastical profits, and the bishop's and his clergy's living together, that may be without much difficulty discovered also, out of Bede, to have continued after Honorius also? But, wherever that testimony of his dividing parishes was first found, I doubt it was misunderstood, through the various signification of *parochia*. For, in those ancient times, *parochia* usually denoted as well a bishopric or diocese, as a less parish. . . . And the truth is, that it may be said, properly enough, that Honorius was the first under whom his province was divided into such *parochiæ* or bishoprics; that is, no other bishoprics, except Canterbury, London, and Rochester, were in his province until his time; these three being almost of one antiquity.'

Notwithstanding this criticism of Selden, Sir Henry Spelman,[1] in his *Councils* (published A.D. 1639) repeated in terms Stow's statement, referring expressly to Stow; and Hume[2] in the first part of his *History of England* (published A.D. 1761) repeated that of Josceline or Parker. Dr. Lingard,[3] a more critical writer than Hume, thought the tradition as to Honorius reconcilable with the statement which the editors of Bede, Whelock and Smith, had extracted from the

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attributed the origin of modern parishes to Theodore. Elmham[1] wrote thus:

'The most pious Theodore, with the consent of the rest of the bishops and other holy fathers, conferred the power in all the cathedral cities of whatever province (*in quarumlibet provinciarum civitatibus*) and in all townships (*necnon villis*) of building churches and making separate parishes (*paroecias distinguendi*), obtaining also for them the royal assent, so that all men of sufficient estate, whose devotion led them to build churches in God's honour upon their own lands, might for ever enjoy the patronage of those churches; but if any built them within the limits of other men's lordships, such churches were to be in the patronage of the lord of the land on which they were built.'

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There is also an article[1] in this Penitential, showing that the ecclesiastical organisation of the province of Canterbury (the word *provincia* is there used in that sense) did not, in Theodore's time, admit of public penances; and, for that reason, there was to be no public reconciliation of penitents.

The 'second book' of the same compilation contains chapters on 'the service of the church, and its rebuilding;'[2] on 'the three principal degrees of the church;'[3] on 'the ordination of divers persons;'[4] (which extends to the consecration of abbots, abbesses, and monks); on 'baptism and confirmation;'[5] on 'the mass of the dead;'[6] on 'abbots and monks, or monasteries;'[7] (which extends to the election and deprivation of an abbot, the obligation of an abbot to allow the advancement of a monk of his house to the episcopate, and the obligation of a monk ordained priest to return to the monastery); and on 'various' other[8] ecclesiastical 'questions.' Not one of the articles, in any of those chapters, deals with the position or duties of a parish priest, or implies that a definite office and charge of that kind then existed.

Two recent writers who have accepted Elmham's statement as evidence of the formation of parishes of the modern sort by Theodore — Mr. Soames[9] and Dean Hook[10] — have embellished that statement by some additions; such as, that the institution was founded on something similar, with which Theodore 'had been familiar

[1] Lib. i., cap. 13, § 4 (Haddan and Stubbs, *Councils*, vol. iii., p. 187).
[2] *Ibid.*, p. 190.
[3] *Ibid.*, p. 191.
[4] *Ibid.*, p. 192.
[5] *Ibid.*, p. 193.
[6] *Ibid.*, p. 194.
[7] *Ibid.*, p. 195.
[8] *Ibid.*, pp. 202, 203.
[9] *History of Anglo-Saxon Church* (2nd ed. 1838), vol. i. p. 119.
[10] *Lives of Archbishops* (3rd ed. 1875), vol. i. p. 152.

in the Greek Church;' that it was 'an oriental system,' following the principle of laws enacted by the Emperor Justinian. Mr. Soames saw, in the mere fact of the consecration of two noblemen's churches by John, a northern bishop of that time, which Bede mentions (and I see no reason to doubt that there were at the same time other such churches, built by other private landowners on their own estates), evidence that 'this judicious policy had' (in those cases) 'proved effective;' though he added, 'that the system had been in operation for ages before every English estate of any magnitude had secured the benefit of a church within its boundary;' and that 'this very lingering process has thrown much obscurity around the origin of parishes.' It might have been supposed, by a reader unacquainted with Bede's text,[1] that there was in Bede some reference to the 'judicious policy' ascribed to Theodore, or something in Bede's narrative of the consecration of those churches to connect them with territorial arrangements identical with, or similar in principle to, those of parishes, in the modern sense of that word. But it is not so. They were instances of consecrated oratories, built by Northumbrian noblemen on their estates, and nothing more. There is nothing, in Bede's mention of them, by which they could be distinguished from the churches of that class, which were common under the Frank kingdom and empire before the introduction of the parochial system. The silence of Bede, who devoted a considerable space in his *History* to the acts of Theodore, appears to me to be strong negative proof that no such novelty in the organisation of the Church as Elmham ascribed to him was introduced by that prelate.

[1] *Hist.*, lib. v., capp. 4, 5.

Lappenberg[1] appears to have thought that 'the earliest parish churches' in England were 'first erected in the south, under Archbishop Theodore; and about a century later, that is, before and during the time of Egbert, Archbishop of York, in the northern parts of England.' I shall not here consider what was done in the eighth century;[2] but for Lappenberg's distinction between the north and south there is no warrant. The two instances mentioned by Bede,[3] on which Mr. Soames laid stress, were in the north (in Yorkshire), not in the south. Mr. Haddan and Bishop Stubbs say[4] that there 'were no settled parishes in Northumberland in the time of Cuthbert, A.D. 670; nor in the beginning of Egbert's pontificate, A.D. 734.' Elmham, on whom alone the tradition rests, makes no such distinction; and, as to some churches on the coast of Essex (to which Bede's statement[5] that Cedda 'set up churches, and ordained priests and deacons for them in some places among the East Saxons,' relates), Lappenberg[6] himself thinks that they were similar to four baptismal churches founded in Holstein, soon after its conversion, by the Anglo-Saxon Willehad, '*from the districts of which the later parochial division was established.*' That the modern parochial system may have been developed by some modification and adaptation of the principle on which districts were assigned to the old baptismal churches, I have myself suggested, in the former part of this work;[7] and it is not to be doubted that the churches of the great monasteries which were founded in England in

[1] *History of England under the Anglo-Saxon Kings* (Thorpe's translation, 1845), vol. i. p. 196.

[2] See *post*, p. 129. [3] *Hist.*, lib. v., capp. 4, 5.

[4] Haddan and Stubbs, *Councils*, vol. iii. p. 122, note.

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and shortly before Theodore's time were baptismal churches, similar (generally) to those of the Continent. But, although the parish system may have been a development, springing out of the older system of baptismal churches, it is nevertheless very remote from the truth to describe the two systems as the same.

My conclusion is, that Mr. Haddan and Bishop Stubbs were certainly right, when they set aside Elmham's statement (as Selden set aside those of Josceline or Parker and Stow), as having grown 'out of a confusion between the ancient and modern senses of the word *parochia*. 'Theodore,'[1] (they say) 'who certainly constituted dioceses,—the identical dioceses, with a few exceptions and subdivisions, that exist at the present day,—may have been thence inferred to have constituted parishes.' The conception of the modern parochial system is unsuitable to any other than a settled church, in a settled country. The completion of the diocesan system must come first. That was Theodore's work. The country was unsettled. Mercia had been converted only just before the commencement of his primacy. Northumbria and Essex had very recently required reconversion from relapses into heathenism; and, in[2] those cases, the work had been done by missionaries of the British and not of the Anglo-Saxon Church. Sussex[3] was not converted until Theodore's own time; this also was done, not by any regular, but by an irregular missionary effort. It is not reasonable to believe, on evidence no better than the statement of a monk of the fifteenth century (who, if he had

[1] Haddan and Stubbs, *Councils*, vol. iii. p. 122, note. (See also *ibid*, p. 114, note.)

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access to Canterbury records, may have honestly misunderstood them, as Josceline and Stow did in the succeeding century), that Theodore anticipated, under circumstances so little suggestive of them, developments, which in older Churches of the Continent were reserved for a later age.

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converted by Wilfrid,[1] who took charge of it at that time as bishop; but it was not till A.D. 711, after Theodore's death, that Selsey became the seat of a settled bishopric for that kingdom.[2]

The history thus summarised will enable any one to judge of the probability of the statements, for which there is no ancient authority, but which were made by chroniclers of later ages, and have been repeated by more recent writers, as to the introduction into England of what is now known as the parochial system,—by Honorius according to some; according to others by Theodore;—in either case, more than a century before the foundations of that system were laid on the other side of the Channel, by the capitulars of Louis the Simple at Aix-la-Chapelle.[3]

The author of the tradition ascribing the origin of that system to Honorius appears to have been Archbishop Parker, or Josceline his secretary, to whom Selden[4] ascribed the authorship of the work commonly attributed to that archbishop; rightly calling it a 'History of the Archbishops of Canterbury'; though its title is 'Of the antiquity of the Church of Britain.'[5] It is not improbable, that the archbishop may have prepared the materials for that work, from the great collection of monastic and historical manuscripts which the dissolution in his time of the religious houses enabled him to make, and which he bequeathed to Corpus Christi College, Cambridge; and that he may have employed in their arrangement the hand of Josceline, which is seen in marginal and other annotations on some of those manuscripts, and also on others belonging to the Cottonian

[1] Bede, *Hist.*, lib. iv., cap. 13.
[2] *Ibid.*, lib. v., cap. 18.
[3] *Ante*, p. 85.
[4] *Hist. of Tithes*, ch. 9, § 3.
[5] First published A.D. 1572 (three years before the archbishop's death).

collection. The passage as to Honorius,[1] in this work (whether Parker's or Josceline's), is:

'He not only placed bishops over the Church, as chief keepers of its bulwarks, but he was also the first who, dividing his province into parishes, appointed ministers unto them (*neque solum episcopos, tanquam superiores turrium custodes, ecclesiæ superimposuit, sed etiam provinciam suam primus in parochias dividens, inferiores ministros ordinavit*); whom also he frequently instructed and exhorted, that they should teach God's people, gently and patiently, not by their doctrine only, but also by the goodness of their lives; knowing that unbelievers are thus more easily converted, than by severity of reproof or austerity of manners.'

To the same source may, with great probability, be traced a statement to the same effect in Stow's *Annals*,[2] a work published soon after that of the archbishop or his secretary. Stow was, like Josceline, a learned antiquary, and made large collections from ancient documents; and Archbishop Parker was his patron. Under the year A.D. 640 (when Ercombert, King of Kent, is stated by him to have 'first suppressed the temples of the idols'), he said:

'It is recorded in the antiquities of Christ's Church in Canterbury, that about this time Honorius, Archbishop of Canterbury, divided his province into parishes.'

Camden,[3] in the chapter of his *Britannia* which relates to 'the division of Britain,' has a passage to the like effect:

'As to the Ecclesiastical Government, after the Bishop of Rome[4] had assigned to each presbyter his church, and set them

[1] *De Antiquitate*, etc., p. 52 (ed. 1605).

[2] Page 59 (Howes' ed. 1631). [3] Vol. i. p. ccxxviii. (ed. 1722).

[4] It has been seen, in the first part of this work, that the modern system of parishes, on the Continent of Europe, did not grow up till much later.

over distinct parishes, Honorius, Archbishop of Canterbury, about the year of our Lord 636, first began to divide England into parishes, as we read in the Canterbury History.'

The *Britannia* was published soon after the works of Parker (or Josceline) and of Stow; and Camden purchased Stow's collections from ancient manuscripts, etc. Whether, by the *Canterbury History*, he meant the work of Parker or Josceline, or the record of 'the antiquities of Christ's Church in Canterbury,' to which Stow referred, may be doubtful. Bishop Godwin,[1] in his work on 'the Bishops of England' (published A.D. 1611), followed these authorities.

Selden, in his *History of Tithes*,[2] made observations upon these statements, which (but for the disposition of later writers of different political and ecclesiastical sentiments to disregard his authority) might have been sufficient to prevent their repetition afterwards. After speaking of the community of life, and of goods, between the bishops and clergy in Augustin's time (Honorius had been one of Augustin's own companions), he said:

'Yet it is commonly received that Honorius, about the year 630, first divided his province into parishes. And in the late history of the Archbishops of Canterbury, written by Mr. Josceline, it is thus delivered of him' (quoting the passage). 'And according to this have some of our greatest and most learned writers[3] related. But I doubt much how it can stand with truth. For, if *parochiæ* be here meant only for such as were assigned limits for those which were sent arbitrarily from the bishop, out of the number of his

[1] *De Præsulibus*, etc., p. 40 (ed. 1611).

[2] Ch. 9, § 3. Bishop Kennett, in A.D. 1704 (*Case of Impropriations*, p. 4) took the same view with Selden.

[3] Evidently referring to Stow, Camden, and Godwin.

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[5] Lib. i., cap. 9, § 7 (Haddan and Stubbs, *Councils*, vol. iii. p. 185).

There is also an article[1] in this Penitential, showing that the ecclesiastical organisation of the province of Canterbury (the word *provincia* is there used in that sense) did not, in Theodore's time, admit of public penances; and, for that reason, there was to be no public reconciliation of penitents.

The 'second book' of the same compilation contains chapters on 'the service of the church, and its rebuilding;'[2] on 'the three principal degrees of the church;'[3] on 'the ordination of divers persons;'[4] (which extends to the consecration of abbots, abbesses, and monks); on 'baptism and confirmation;'[5] on 'the mass of the dead;'[6] on 'abbots and monks, or monasteries;'[7] (which extends to the election and deprivation of an abbot, the obligation of an abbot to allow the advancement of a monk of his house to the episcopate, and the obligation of a monk ordained priest to return to the monastery); and on 'various' other[8] ecclesiastical 'questions.' Not one of the articles, in any of those chapters, deals with the position or duties of a parish priest, or implies that a definite office and charge of that kind then existed.

Two recent writers who have accepted Elmham's statement as evidence of the formation of parishes of the modern sort by Theodore — Mr. Soames[9] and Dean Hook[10]—have embellished that statement by some additions; such as, that the institution was founded on something similar, with which Theodore 'had been familiar

[1] Lib. i., cap. 13, § 4 (Haddan and Stubbs, *Councils*, vol. iii., p. 187).
[2] *Ibid.*, p. 190.
[3] *Ibid.*, p. 191.
[4] *Ibid.*, p. 192.
[5] *Ibid.*, p. 193.
[6] *Ibid.*, p. 194.
[7] *Ibid.*, p. 195.
[8] *Ibid.*, pp. 202, 203.
[9] *History of Anglo-Saxon Church* (2nd ed. 1838), vol. i. p. 119.
[10] *Lives of Archbishops* (3rd ed. 1875), vol. i. p. 152.

in the Greek Church;' that it was 'an oriental system,' following the principle of laws enacted by the Emperor Justinian. Mr. Soames saw, in the mere fact of the consecration of two noblemen's churches by John, a northern bishop of that time, which Bede mentions (and I see no reason to doubt that there were at the same time other such churches, built by other private landowners on their own estates), evidence that 'this judicious policy had' (in those cases) 'proved effective;' though he added, 'that the system had been in operation for ages before every English estate of any magnitude had secured the benefit of a church within its boundary;' and that 'this very lingering process has thrown much obscurity around the origin of parishes.' It might have been supposed, by a reader unacquainted with Bede's text,[1] that there was in Bede some reference to the 'judicious policy' ascribed to Theodore, or something in Bede's narrative of the consecration of those churches to connect them with territorial arrangements identical with, or similar in principle to, those of parishes, in the modern sense of that word. But it is not so. They were instances of consecrated oratories, built by Northumbrian noblemen on their estates, and nothing more. There is nothing, in Bede's mention of them, by which they could be distinguished from the churches of that class, which were common under the Frank kingdom and empire before the introduction of the parochial system. The silence of Bede, who devoted a considerable space in his *History* to the acts of Theodore, appears to me to be strong negative proof that no such novelty in the organisation of the Church as Elmham ascribed to him was introduced by that prelate.

[1] *Hist.*, lib. v., capp. 4, 5.

Lappenberg[1] appears to have thought that 'the earliest parish churches' in England were 'first erected in the south, under Archbishop Theodore; and about a century later, that is, before and during the time of Egbert, Archbishop of York, in the northern parts of England.' I shall not here consider what was done in the eighth century;[2] but for Lappenberg's distinction between the north and south there is no warrant. The two instances mentioned by Bede,[3] on which Mr. Soames laid stress, were in the north (in Yorkshire), not in the south. Mr. Haddan and Bishop Stubbs say[4] that there 'were no settled parishes in Northumberland in the time of Cuthbert, A.D. 670; nor in the beginning of Egbert's pontificate, A.D. 734.' Elmham, on whom alone the tradition rests, makes no such distinction; and, as to some churches on the coast of Essex (to which Bede's statement[5] that Cedda 'set up churches, and ordained priests and deacons for them in some places among the East Saxons,' relates), Lappenberg[6] himself thinks that they were similar to four baptismal churches founded in Holstein, soon after its conversion, by the Anglo-Saxon Willehad, '*from the districts of which the later parochial division was established.*' That the modern parochial system may have been developed by some modification and adaptation of the principle on which districts were assigned to the old baptismal churches, I have myself suggested, in the former part of this work;[7] and it is not to be doubted that the churches of the great monasteries which were founded in England in

[1] *History of England under the Anglo-Saxon Kings* (Thorpe's translation, 1845), vol. i. p. 196.

[2] See *post*, p. 129. [3] *Hist.*, lib. v., capp. 4, 5.

[4] Haddan and Stubbs, *Councils*, vol. iii. p. 122, note.

[5] *Hist.*, lib. iii., cap. 22. [6] *Ubi supra*, p. 197. [7] *Ante*, p. 61.

and shortly before Theodore's time were baptismal churches, similar (generally) to those of the Continent. But, although the parish system may have been a development, springing out of the older system of baptismal churches, it is nevertheless very remote from the truth to describe the two systems as the same.

My conclusion is, that Mr. Haddan and Bishop Stubbs were certainly right, when they set aside Elmham's statement (as Selden set aside those of Josceline or Parker and Stow), as having grown 'out of a confusion between the ancient and modern senses of the word *parochia*. 'Theodore,'[1] (they say) 'who certainly constituted dioceses,—the identical dioceses, with a few exceptions and subdivisions, that exist at the present day,—may have been thence inferred to have constituted parishes.' The conception of the modern parochial system is unsuitable to any other than a settled church, in a settled country. The completion of the diocesan system must come first. That was Theodore's work. The country was unsettled. Mercia had been converted only just before the commencement of his primacy. Northumbria and Essex had very recently required reconversion from relapses into heathenism; and, in[2] those cases, the work had been done by missionaries of the British and not of the Anglo-Saxon Church. Sussex[3] was not converted until Theodore's own time; this also was done, not by any regular, but by an irregular missionary effort. It is not reasonable to believe, on evidence no better than the statement of a monk of the fifteenth century (who, if he had

[1] Haddan and Stubbs, *Councils*, vol. iii. p. 122, note. (See also *ibid*, p. 114, note.)

[2] *Ibid.*, pp. 91, 93, 94, 96, 109 (from Bede).

[3] *Ibid.*, p. 167 (from Bede).

access to Canterbury records, may have honestly misunderstood them, as Josceline and Stow did in the succeeding century), that Theodore anticipated, under circumstances so little suggestive of them, developments, which in older Churches of the Continent were reserved for a later age.

## CHAPTER II

### SECOND PERIOD—BEDE, BONIFACE, ARCHBISHOPS CUTHBERT AND EGBERT; KINGS INA, WIHTRAED, OFFA

### § 1. *Introductory*

THE primacy of Theodore introduced a new era in the Anglo-Saxon Church. By him the metropolitan authority was firmly established; the diocesan organisation was all but completed; the practice of holding national synods was introduced. Under him, and his coadjutor Abbot Adrian, schools, not of ecclesiastical only but of classical learning, were successfully planted in the great religious houses, which, during and just before that time, began to arise. Canterbury, York, Peterborough,[1] Malmesbury,[2] Abingdon,[3] Wearmouth,[4] Glastonbury,[5] Evesham,[6] and Crowland,[7] became centres of light to the Church, and to people of all ranks cities of refuge, fortresses of humanity and civilisation. It was in Theodore's time that Bede, a child seven years old, was placed under the care of the first Abbot of Wearmouth; there, or in the affiliated monastery of Jarrow, he received his education. Ald-

[1] Founded about A.D. 650. [2] About A.D. 675. [3] About A.D. 675.
[4] Founded, about A.D. 673, by Benedict Biscop, who came with Theodore from Rome, and was for some time Abbot of Canterbury.
[5] Anglo-Saxon foundation (there had been an earlier British) about A.D. 680. [6] A.D. 709. [7] A.D. 716.

helm,[1] the first Bishop of Sherborne (whom Lappenberg and others have regarded as Bede's equal in scholarship, and his superior in practical wisdom), was a pupil in the schools of Malmesbury and Canterbury. These men, and others like them, handed on the lamp of learning to Egbert, Prince-Archbishop of York, Alcuin's teacher, and founder of the famous library at York which Alcuin has celebrated in verse,[2] where were found the works of Aristotle, Cicero, Pliny, Virgil, and Lucan, as well as a large store of ecclesiastical literature. The Anglo-Saxon Church stood no longer in need of foreign rulers; from the death of Theodore to the Conquest it was governed in both provinces by native prelates, and acquired a national character. Its light and influence extended to the continent of Europe,[3] where the Gallican and other Churches had for a short time fallen behind it in the race. Early in the eighth century it sent missionaries to the pagan races of Friesland and other parts of Germany,[4] the greatest of whom was Boniface. It gave Alcuin to the Frank kingdom, to be the restorer of letters in France, and the instructor, minister, and friend of the hero of the age. The writings

[1] See his Life, by William of Malmesbury (reprinted in Wharton's *Anglia Sacra*, vol. ii. pp. 1-49). See also Hook, *Lives of Archbishops*, vol. i. p. 180.

[2] William of Malmesbury, *Gesta Regum* (Hardy's ed. 1840), p. 93; and see Hook's *Lives of Archbishops* (3rd ed.), vol. i. pp. 165, 166. Archbishop Egbert was brother to one of the Kings of Northumbria, who, after an honourable reign of some years, retired and adopted the monastic life.

[3] See Alcuin's verses (A.D. 793) in Haddan and Stubbs, *Councils*, vol. iii. p. 478; King Alfred's Preface to his translation of Pope Gregory's *Pastoral* (Wise's edition of Asser, Oxford 1722, pp. 87-90); Wasserschleben, Preface to *Bussordnungen*, etc., p. iv.

[4] See Hook, *Lives of Archbishops*, vol. i. (3rd ed.) pp. 235-237; Haddan and Stubbs, *Councils*, vol. iii. pp. 302, 303, etc.

of Anglo-Saxon scholars and divines, from Theodore downwards, became (probably by Alcuin's means) well known to and highly esteemed by Continental Churches.

### § 2. *Monastic Baptismal Churches.*

I postpone the subject of tithes (which in this second period does not emerge till towards its close) to deal first with the question, whether there were parishes, of the modern sort, in England during the eighth century? There is evidence in my judgment sufficient to justify the conclusion that there were not. As on the Continent 'baptismal churches,' generally conventual, were an institution intermediate, in order of time as well as in ecclesiastical functions, between dioceses and parishes of the modern sort, so in England were the monasteries[1] of canons or monks, and their churches. It was upon these (which included cathedral churches) that the administration of the offices of religion to the lay people practically depended during the eighth century, and for a considerable time afterwards.

Of laws, during the primacy of the first Saxon archbishop, Brihtwald (A.D. 693-731), we have the code of Ina in Wessex (about A.D. 690), and of Wihtraed in Kent (about A.D. 694). Under the three next primates, Tatwine, Nothelm, and Cuthbert (A.D. 731-758), we have the letters of Boniface and Bede, and the Acts of the Provincial Synod of Cloveshoo, held under Archbishop Cuthbert in A.D. 747. All these contain evidence—direct or indirect, scanty or full—of the actual state of things; and neither there, nor in any other part of the ecclesiastical literature of that time which has been preserved to us, is there any trace of a

[1] Lappenberg (Thorpe's translation, 1845, pp. 191-195).

parochial system, or of the existence of parishes, in the modern sense. Whenever the word *parochia* is used, it is for a diocese, not a parish; not even (as far as I have been enabled to observe) for any district of which a baptismal church, other than the cathedral of the diocese, may have been the immediate ecclesiastical centre.

### § 3. *Secular Laws.*

The laws of Ina,[1] King of Wessex, were made (about A.D. 690) in a witenagemot of that kingdom, at which the two bishops whose sees were then subject to Ina's dominion (Winchester and London) were present. Some of these relate to ecclesiastical subjects; but there is only one which bears, even indirectly, upon the question of territorial organisation. That is the sixth article, '*Of Fighting.*'[2] It imposes penalties on those who fight in different places—the king's house; a *minster* (mynstre); an ealdorman's house, or the like; a land-renter's or boor's house; in a field, or at a feast;—graduated according to the character of the place. A 'minster' must here mean a monastery, or a monastic church; and, from the absence of any penalty for fighting in any other consecrated building, it may be inferred that all the churches then in existence, or, at all events, all the public churches, as to which public legislation was thought necessary, were of that character.

Another famous enactment, in favour of the Church, was the 'grant of privileges' by Wihtraed,[3] King of Kent (about A.D. 694), in a Kentish witenagemot, at which both

[1] Thorpe's *Ancient Laws and Institutes*, vol. i. p. 102.

[2] *Ibid.*, p. 107.

[3] Anglo-Saxon Chronicle; *sub* A.D. 694 (see Haddan and Stubbs, *Councils*, vol. iii. pp. 238-246).

the Kentish prelates, the Archbishop and the Bishop of Rochester, were present. In the preamble they are said to have treated of, and anxiously examined into, 'the state of the churches of God or monasteries in Kent,' of which the king's predecessors or near relatives were founders. All kings, princes, and other laymen were by that law forbidden to usurp 'dominion over any church or family of a monastery' (*alicujus ecclesiæ vel familiæ monasterii dominium*) so founded; the exclusive right to fill vacancies in the office of abbot or abbess was reserved to the diocesan bishop (*propriæ parochiæ episcopus*); it was declared to be for the metropolitan bishop 'to govern the churches of God, and to choose, appoint, ordain, establish, and correct (*ammonere*) abbots, abbesses, priests, deacons, so that no one of the sheep of the Eternal Shepherd might be lost'; and it was immediately added, that 'this precept is for the monasteries whose names follow: Upminster, Reculver, Southminster, Dover, Folkestone, Lyminge, Sheppey, and Hoo.'

Exemptions from public burdens were by the same law granted to the cathedral churches of Canterbury and Rochester.—It is at least a reasonable inference that these were, at that time, all the public churches in the kingdom of Kent, on which 'the sheep of the Eternal Shepherd,'[1] in that kingdom, were dependent for pastoral care.

### § 4. *Letters of Boniface.*

In the letters of Boniface (then Archbishop of Mentz) to the English Church, and to Archbishop Cuthbert, there is little which has a direct bearing on English church organisation, but much as to abuses connected with monasteries.

[1] '*Ne quis ovis de ovibus æterni pastoris erret*' (Haddan and Stubbs, *Councils*, vol. iii. p. 239).

That to the English Church generally[1] (written probably before A.D. 741) has an address, to all the then known orders and degrees of ecclesiastics: 'To all the most reverend bishops, the venerable white-robed members of the presbyterate (*venerabilibus presbyteratus candidatis*), the deacons, canons, clerks, the true flock of Christ, prelates, abbots, and abbesses, the most humble monks, servants of God, virgins consecrated and devoted to God, and all other the maidens of Christ, and generally all Catholics fearing God, of the English stock and race.' Of the rank or office of parish priest there is here no indication. In his letter to Archbishop Cuthbert,[2] the word *parochia* is used as to the bishop's diocese, which he ought to visit once a year, and as to nothing else.

### § 5. *Bede's Letter to Archbishop Egbert.*

Lappenberg,[3] on grounds which do not support his inference from them, treated Bede as an authority for the opinion that parish churches were 'first erected before and during the time of Egbert, Archbishop of York, in the northern parts of England':

> 'St. Cuthbert, Abbot of Melrose, wandered from place to place to confirm and animate believers by his preaching; yet, when Bede subjoins to this narrative that *such was the custom of the clergy at that time*, it would follow, that in his own days the case was otherwise in those northern parts.'

I am far from clear (considering what we know to have been Bede's opinion as to the corruption and degeneracy of many of the northern clergy between the time of St. Cuthbert's preaching and that at which he wrote), that the

[1] Haddan and Stubbs, *Councils*, vol. iii. p. 313. [2] *Ibid.*, p. 376.
[3] *History of England*, etc. (Thorpe's translation), vol. i. pp. 196, 197.

conclusion would legitimately follow, if the premiss had been correct. But Bede[1] did *not* subjoin to his account of St. Cuthbert's preaching, 'that such was the custom of the clergy at that time.' The passage is this:

'He was wont often to leave his monastery, sometimes on horseback, but more frequently on foot, and to go to the surrounding townships and preach to wanderers the way of truth. . . . For indeed it was at that time the manner *of the English people* (*erat quippe moris eo tempore populis Anglorum*) all to collect together, when a clerk or priest came into their township, at his call, to hear the Word; and to hear gladly those things which were spoken to them; and, still more gladly, to put in practice those things which they could hear and understand.'

He added, that St. Cuthbert went chiefly to the poorest places, and those which were far away in rough and high mountain districts, 'a horror generally to other men.'

Bede, therefore, spoke of the 'custom at that time,' not of the clergy, but of those to whom they preached; and if there be an implied comparison with his own later time, it was not that the people had now the benefit of a settled ministry, under a different system, but that they were less desirous of hearing, and less attentive in practice to what they heard.

If Bede had written as Lappenberg represented him, and if Lappenberg's inference were sound, it would prove too much; viz. that so many parish churches existed in Bede's time, as to have superseded, in the northern province, the need for itinerant preaching, even in wild and outlying places, according to the older custom. This Lappenberg himself evidently did not think. He referred, in a note, to Bede's letter to Archbishop Egbert;[2] but that letter, written

[1] *Hist.*, lib. iv., cap. 27.

[2] Haddan and Stubbs, *Councils*, vol. iii. pp. 314-325.

in the last year of Bede's life, is far from supporting, and really repels his inference from the passage in the *History*. It is a document of great interest, for the light which it throws on the state of the Northumbrian Church at that time, and also upon the character of the writer and his correspondent. Egbert had just been made archbishop; he had, according to tradition, been the pupil, and appears plainly by this letter to have been the friend, of Bede. The letter is full of advice—which might be called fatherly but for the rank of the person addressed—to the archbishop personally, as to the conduct and demeanour befitting his high office, and also as to the affairs and wants of the Church.

Bede suggested to the archbishop to follow the example of the Apostles Paul and Barnabas, who, wherever they went, as soon as they entered into cities or synagogues, preached the Word of God. This (he said)[1] 'is the work to which you are called, and for which you were consecrated.'

'And this you will do if, wherever you go, you collect round you the inhabitants of the place, and deliver to them the word of exhortation, and also, as a leader in the heavenly warfare, with all who come with you, set them an example of good living.'

'And since the places which belong to the government of your diocese occupy too wide a space to make it possible for you alone to go through them all, and preach the Word of God in each of the smaller villages and hamlets (*solus per omnia discurrere, et in singulis viculis atque agellis verbum Dei prædicare*), even in the course of a whole year, it is necessary that you should associate with yourself many helpers in this holy work, by appointing priests and teachers to go through all the villages, constantly preaching the Word of God, and consecrating the heavenly mysteries, and especially administering the office of holy baptism, as opportunity may be found.'

[1] Haddan and Stubbs, *Councils*, vol. iii. pp. 315, 316, §§ 2, 3.

He then advised that those preachers should teach all the people the Apostles' Creed, and the Lord's Prayer, in the vulgar tongue; not laymen only, 'but also clerks and monks who do not know Latin.'

A little further on[1] he said:

'We have heard, and it is commonly reported, that many townships and villages of our nation are situated among mountains hard of access or in thorny woodlands, where for many years past no bishop has been seen, to confer any of the gifts of the heavenly ministry; and yet no man there can be free from the payment of dues to the bishop; nor is the destitution of those places confined to the want of a bishop to confirm the baptized by laying-on of hands; they have no teacher to instruct them in the true faith, or in the difference between right and wrong.'

These evils he exhorted the archbishop to correct to the best of his power; and expressed his belief that in so doing he would be supported by Ceolwulf, then King of Northumbria; suggesting that the king should be exhorted to put the ecclesiastical state of his people on a better footing than it had ever yet been, which he thought could only be accomplished by an increase in the number of bishops. He referred to Pope Gregory's desire, that twelve suffragan bishops should be consecrated for the province of York, and urged the archbishop to fulfil it (notwithstanding difficulties arising from improvident grants of public land by former kings), by erecting a sufficient number of monasteries into episcopal sees.[2]

He then proceeded to speak[3] of abuses prevailing in many of the monastic houses of the province (*quibus nostra provincia miserrimè vexatur*),[4] and reminded the archbishop that

[1] Haddan and Stubbs, *Councils*, vol. iii. p. 417, § 4.
[2] *Ibid.*, pp. 318, 319, § 5. [3] *Ibid.*, pp. 319-322, §§ 5-8.
[4] *Ibid.*, end of § 7, p. 322.

it belonged to his office to look carefully into all that was done, right or wrong, in the monasteries of his diocese (*in singulis monasteriis tuæ parochiæ*). After dwelling much on this topic, he returned[1] to that with which he began:

'Of those, too, who are still living in the world, it is needful for you to have care, as was said in the outset of this epistle: you should send to them sufficient teachers of the life by which they may be saved, and make them, among other things, learn by what works they may most please God, from what sins those who desire to please God must abstain, with what sincerity they must believe in God, with what devotion they must pray for the Divine mercy, how diligently they should strengthen themselves against the wiles of unclean spirits by the sign of the Lord's cross, how salutary to all Christians is the daily partaking of the Body and Blood of the Lord, according to the constant practice of the Church of Christ in Italy, Gaul, Africa, Greece, and throughout the East.'

And he complained, that, through the negligence of those who ought to teach them, this sort of religion was a thing so far from and foreign (*peregrinum*) to nearly all the laity of the province, that even the more religious only communicated at the three feasts of Christmas, Epiphany and Easter; although there were many persons of pure life, of both sexes, old and young, fit (if they were but properly instructed) to communicate on every Lord's Day and at other festivals.

The tenor of this letter appears to me to be very adverse to the supposition, that the parochial system had been in Bede's time introduced even partially in the Northumbrian province.

### § 6. *Archbishop Cuthbert's Canons.*

As to the south, the evidence of the synod held under Archbishop Cuthbert in A.D. 747[2] is not less strong.

[1] Haddan and Stubbs, *Councils*, vol. iii. p. 323, § 9. [2] *Ibid.*, p. 340.

How far the 'canons' (as they are called) of that synod may have been founded on suggestions made by Pope Zacharias, from whom a letter[1] was read at the opening of the proceedings, it is impossible to say. There are various matters as to which adherence to the Roman usage is enjoined,[2] probably in consequence of those suggestions; but there is much, which does not speak a foreign origin. As I have said of Bede's letter, so I say of those 'canons,' that they are extremely interesting; they breathe a genuine Christian spirit, and leave a favourable impression of the virtues of Archbishop Cuthbert.

At that synod, besides the primate, eleven suffragans of the province of Canterbury were present. I shall refer to those only of its canons which bear upon my immediate subject.

The third[3] directed a visitation of his diocese (*parochiam suam*) by every bishop, in every year; he was to call before him, at convenient places, the people of all conditions, and both sexes, and publicly to teach them 'as those who seldom hear the Word of God' (*utpote eos, qui raro audiunt verbum Dei*); warning them particularly against certain heathen superstitions.

The fourth[4] enjoined the bishops to admonish the abbots and abbesses of their dioceses (*episcopi in suis parochiis abbates atque abbatissas moneant*) properly to perform their duties. Other[5] canons also related to religious houses and their inmates.

The canons which relate to priests[6] imply, not that they,

[1] Not now extant. [2] Canons 13, 15, 16 (Haddan and Stubbs, *Councils*, vol. iii. pp. 367, 368). [3] *Ibid.*, p. 363. [4] *Ibid.*, p. 364.

[5] The fifth, seventh, nineteenth, twentieth, twenty-eighth, and twenty-ninth (*ibid.*, pp. 364, 368, 369, 374).

[6] The sixth, eighth, ninth, tenth, eleventh, and twelfth (*ibid.*, pp. 364, 365, 366).

or any of them, were or might be in charge of country parishes, but that they belonged to conventual establishments. Thus, in the eighth[1] (entitled, '*That priests attend carefully to the duty of their office*'),—after mentioning the service of the altar, the care of the church (*oratorii domum*) and its accessories, reading, prayer, masses, and psalm-singing, it is added: 'and to give aid, whenever need may be, diligently and faithfully *to their abbots or abbesses.*' By the fourteenth[2] (as to 'the honour and observance of the Lord's Day'), 'all abbots and priests were required to remain,' on the Lord's Day, 'in *their own monasteries and churches*,'[3] without travelling, etc., unless for some necessary cause, and to preach to the inmates or dependents of each house (*subjectis famulis*).

By the fifteenth,[4] they were ordered to perform the offices and sing the appointed hymns for all the canonical hours of day and night, 'so as to follow everywhere the same rule of monastic psalmody' (*monasterialis psalmodiæ parilitatem*); and to pray, 'ecclesiastics or monks' (*ecclesiastici sive monasteriales*), not for themselves only, but also for their kings and the whole Christian people. The seventeenth canon[5] provided for the observance of certain days, in commemoration of Pope Gregory the Great, and Augustin of Canterbury, as holy days, 'by ecclesiastics and monks' (*ab ecclesiasticis et monasterialibus*). The twenty-first

[1] Haddan and Stubbs, *Councils*, vol. iii. p. 365. [2] *Ibid.*, p. 367.

[3] The twenty-ninth canon (entitled, '*Ut nullus servorum Dei inter laicos habitet*'), forbids all *clerks* (*clericos*), as well as monks or nuns, to dwell among laymen in secular houses (*apud laicos habitare in domibus sæcularium*); ordering them to return to the monasteries where they first took the monastic habit (*repetant monasteria, ubi primitus habitum sanctæ professionis sumpserant*). *Ibid.*, p. 374.

[4] *Ibid.*, p. 367. [5] *Ibid.*, p. 368.

canon[1] warned 'monks or ecclesiastics' (*monasteriales sive ecclesiastici*) against drunkenness; the twenty-second[2] exhorted them (by the same description) to frequent communion. The ninth[3] article, as to the employment of priests by the bishops in country places, I translate fully:

'That priests be careful diligently, and according to due order, to fulfil the duty of evangelical and apostolical preaching, by baptizing, teaching, and visiting, through those places and regions of the lay people, which have been suggested and enjoined to them by the bishops of the province (*per loca et regiones laicorum, quæ sibi ab episcopis provinciæ insinuata et injuncta sunt*); so that, according to the Apostle's word, they may be held worthy of double honour; and be very careful, as becomes God's ministers, to set no examples of discreditable or evil conversation, either to secular men or to monastics (*sæcularibus sive monasterialibus*); that is (to mention nothing else), either in drunkenness or for filthy lucre's sake, or by filthy speaking, or the like.'

Throughout this body of canons, from first to last, there is nothing implying the existence of, nothing applicable to, a parochial system. Nor is anything of that kind, during the rest of the same period down to the close of the century, elsewhere to be found. Neither in Archbishop Egbert's 'Penitential,'[4] nor in his answers to certain questions, known as his 'Dialogue of Ecclesiastical Ordinances,'[5] is there anything on that point.[6]

[1] Haddan and Stubbs, *Councils*, vol. iii. p. 369.

[2] *Ibid.*, p. 370. [3] *Ibid.*, p. 365.

[4] *Ibid.*, pp. 416-431. The 'Penitential' (as given by Wasserschleben, and by Haddan and Stubbs), and the 'Dialogue,' are the only works ascribed to Egbert, which may really have been his.

[5] *Ibid.*, pp. 403-413.

[6] *Respons. ad Interrogat.* 12 (*ibid.*, pp. 408, 409).

### § 7. *Episcopal Power as to Revenues.*

From Theodore's time until the legatine councils of A.D. 785-787, we have no information as to tithes in England, except one incidental allusion[1] in the letter of Boniface to Archbishop Cuthbert, written between A.D. 746 and 749. Quoting from Ezekiel (xxxiv. 25), 'Woe be to the shepherds of Israel that feed the flock: should not the shepherds feed the flock? Ye eat the fat, and ye clothe you with the wool,' etc.,—he translated 'shepherds' into 'bishops,' and 'the flock' into 'Christian people' (*per pastores episcopos significat; greges Domini, id est, fideles populos ad pascendum*); and continued: 'In daily offerings and tithes of the people, they receive the milk and wool of the sheep (*lac et lanas ovium Christi oblationibus quotidianis ac decimis fidelium suscipiunt*); but they take no care of the Lord's flock.'

Boniface was Archbishop of Mentz; but he was an Englishman; and writing on matters concerning the English Church to the English primate, he must have thought what he said applicable to England. His words, therefore, may be accepted as evidence, that tithes were paid in England at that time, and that they went into a diocesan treasury, the revenues of which were at the bishop's disposal.

Bede's letter to Archbishop Egbert does not anywhere mention tithes; but it speaks[2] of the bishop as the receiver of those church dues which were paid as of obligation, even in places which the ordinary ministrations of the church did not reach. Of the administration of church revenues

[1] Haddan and Stubbs, *Councils.*, vol. iii. p. 380.

[2] Sect. 4 (*ibid.*, p. 317).

by a good Anglo-Saxon bishop at the end of that century (so far as relates to hospitality and almsgiving), some opinion may be formed, from a letter written in A.D. 796, by Alcuin[1] to Archbishop Eanbald of York, in which he urged the importance of choosing suitable places for 'guest-houses or hospitals (*xenodochia, id est hospitalia*), for the daily entertainment of poor persons and strangers;' (*in quibus sit quotidiana pauperum et peregrinorum susceptio, et ex nostris substantiis habeant solatia*). Alcuin was Abbot of Ferrieres in France.

## § 8. *King Offa.*

A few modern writers (whom some persons even now accept as authorities) have ascribed to Offa, King of Mercia (who died, after a long reign, in A.D. 796), a grant of tithes to the Church. The story is thus told by Dean Prideaux[2] in his book about Tithes:

'About the year 794, Offa made a law whereby he gave unto the Church the tithes of all his kingdom, which the historians tell us was done to expiate for the death of Ethelbert, King of the East Angles.'

Dean Prideaux seems to have persuaded himself, not only that this was true, but that, in making such a law, Offa intended to imitate Charlemagne's capitulars; of which he supposed Charlemagne to have sent him copies.

What historians tell us this? There are fables enough about King Offa in some of the Chronicles; and for this fable, the Chronicle of John Bromton, Abbot of Jorvaulx

[1] Haddan and Stubbs, *Councils*, vol. iii. p. 504.

[2] *The Original and Right of Tithes*, published in A.D. 1709 (2nd ed., London 1736, pp. 101-103).

in Yorkshire, is cited. That work belongs to the latter part of the fourteenth century, and is of no credit, except when derived from earlier sources.[1] No statement of that 'historian' would be worth anything, as proof that Offa 'gave unto the Church the tithes of all his kingdom,' if he had said so. But neither Bromton, nor any other historian, did say so. What Bromton[2] said is this:

'This Offa, by the wicked advice of his wife, treacherously put to death St. Ethelbert, King of the East Anglians, when visiting him as a suitor to his daughter: in atonement for which sin, he brought down his pride to such a degree of humility and penitence, that he gave to Holy Church *a tenth of all that belonged to him* (*decimam omnium rerum suarum sanctæ ecclesiæ dedit*), and also conferred, as it is said, many lands upon the Church of Hereford, in which the same glorious martyr Ethelbert lies; which lands that church possesses to this day.'

He went on to speak of the translation, by the same king, of the relics of St. Alban to Verulam; of his foundation of St. Alban's Abbey; of his journey to Rome; and of his gift of Peter's pence to the Pope.

Only two later chroniclers followed Bromton in that statement;—Polydore Vergil,[3] in the time of Henry VIII., and Holinshed,[4] in the time of Elizabeth. Polydore Vergil's

[1] See Mr. Thorpe's 'Literary Introduction' to his translation of Lappenberg, p. lix. The Chronicle is supposed to have been written under Abbot Bromton's name, not by himself.

[2] Twysden's *Hist. Angl. Script. X.* (1651-52), p. 775.

[3] *Hist. Angl.*, lib. iv., ed. 1649, p. 99. Polydore Vergil was an Italian, of Urbino, who, having come to England to collect 'Peter's pence' for the Roman see, remained in this country, and was made Archdeacon of Wells. He published his History of England, with a dedication to Henry VIII., in A.D. 1533.

[4] *History of England*, book vi. cap. 6. Holinshed was a bookseller, and not the author of the 'History' which he published.

words are, that 'for fear of the punishment due to his sins, he determined to appease the wrath of God, and gave *the tenth part of all his goods* to priests and other poor men (*decimam partem omnium bonorum sacerdotibus aliisque inopibus hominibus condonavit*). Polydore added, that, being truly penitent, he did not consider that he had by this, or by his foundation of St. Alban's and Bath Abbeys, and the church which he built at Hereford, done enough; but that he also went to Rome to obtain absolution, and there 'made his realm tributary,' by the grant of Peter's pence, to the Pope. Holinshed translated Polydore: 'Finally, King Offa, as it were for a means to appease God's wrath, which he doubted to be justly conceived towards him for his sin and wickedness, granted *the tenth part of his goods* unto churchmen and to poor people.'

If this story had been true, it would not have been to the purpose. A gift of the tenth part of a man's own goods or property has nothing, beyond the principle of decimation, in common with a law for the payment of tithes. Selden[1] referred (among other things) to this story, as told by Polydore Vergil, when he was discussing the question (with which I shall deal in its proper place) of a later supposed grant of tithes by King Ethelwulf, the father of Alfred.

'Should it' (he said) 'be understood only for a particular consecration to the Church of one time, and of the land itself, to be employed to other good uses of charity, then had it no more place here among the laws of tithes, than the story of Robert, Earl of Gloucester, his giving every tenth stone of his provision for the building of a tower near to Bristol, to the erecting of a chapel; or Edward the Confessor, his building

[1] *Hist. of Tithes*, ch. 8, § 4, p. 208 (ed. 1618).

Westminster Abbey with the tenth of one year's revenue; *or Offa's giving the tithe of his estate to the clergy and the poor.*'

I must not omit to add that, except as to the murder of King Ethelbert, and the grant of Peter's pence (of which, if really made by Offa, the date and the occasion were misrepresented), the story is mythical. Neither the alleged gift of a tenth of Offa's estate or goods to the Church, nor his alleged journey to Rome, is mentioned by the author of the Anglo-Saxon Chronicle, or Asser, or Ethelward (who wrote before the Conquest); nor by Florence of Worcester, or the author of the history current under the name of Ingulph (who wrote in the eleventh century); nor by William of Malmesbury, Henry of Huntingdon, or Symeon of Durham (who wrote in the twelfth century); nor by Diceto, or Gervase of Canterbury, or John of Wallingford, or Roger Hoveden, or John, Abbot of Peterborough, or the Melrose Chronicle (which belong to the thirteenth century). All those writers spoke more or less of Offa; all, except Symeon, the Abbot of Peterborough, and the Melrose Chronicle, spoke of the murder of King Ethelbert; and several of them (Asser, Malmesbury, Hoveden, and the Melrose Chronicle) told or repeated a romantic story, as to the crimes, adventures, and miserable end of one of Offa's daughters.[1]

In the latter part of the thirteenth century, the mythical element which had gathered round the memory of King Offa received great development in the *Flowers of Histories* of Roger of Wendover (Prior of Belvoir), and in the *Lives of the Two Offas*, by a monk of St. Albans, generally

[1] *Asser* (Wise's ed., Oxford 1722), p. 16; and Giles' *Six Old English Chronicles* (1848), p. 47; *Malmesbury* (Hardy's ed. 1840), *De Gestis Regum*, vol. i. pp. 169, 170; *Hoveden* (Riley's transl. 1853), p. 19; *Melrose* (in Fulman's *Rerum Anglic. Scriptores*, Oxford 1684, p. 140).

identified with Matthew Paris. It is to the imagination or credulity of those writers (who in the succeeding century were followed by Matthew of Westminster and Bromton), that we owe Offa's supposed journey to Rome,[1] and the attempt to excuse[2] him from the guilt of being a principal actor in King Ethelbert's murder, by representing his queen (a lady commended by Alcuin,[3] in Offa's lifetime, for her virtue and piety) as performing in that transaction a part not unlike that of a Jezebel or Lady Macbeth.[4] But even Wendover and the monk of St. Albans (though the latter, in his enthusiasm for the founder of that monastery, calls him 'magnificent,' 'most glorious,' 'most religious,' and omits nothing which might be supposed to do

[1] *Wendover* (Coxe's ed. 1841), p. 254; *Lives of Offas* (Matt. Paris, *Historia Major*, etc., London 1640, p. 28); *Matt. Westminster* (Frankfort ed. 1601), p. 169; *Bromton* (Twysden, *Hist. Angl. Script. X.*), pp. 775, 776.

[2] *Wendover* (*ubi supra*), p. 249; *Lives of Offas* (*ubi supra*), pp. 23-25; *Matt. Westminster* (*ubi supra*), pp. 147, 148.

[3] Alcuin's Letters in Migne's *Patrologiæ cursus*, ep. 50. The date assigned to it there (A.D. 796) is manifestly wrong. Prince Ecgfrid was crowned king in his father's lifetime, A.D. 786 or 787; and this letter was evidently written on that occasion.

[4] Florence of Worcester also (a more trustworthy authority), though he did not excuse Offa, or relate the extraordinary tale of Wendover and the monk of St. Albans, said that Queen Cynethryth suggested the murder. Lappenberg, who was more disposed than seems quite reasonable to give credence to romantic passages in the chroniclers, repeats (p. 237 of Mr. Thorpe's translation) a story that Queen Cynethryth was, three months after the murder of Ethelbert (*i.e.* in or soon after A.D. 792), 'thrown by robbers into her own well;' which (he says), 'if void of truth, may nevertheless serve to show what her contemporaries thought of her.' How such a story, told in a book written more than 400 years afterwards, could be evidence of what *contemporaries* thought, it is not easy to see. As a matter of fact, Queen Cynethryth survived Offa: she attested two charters of her son Ecgfrid during his short reign in A.D. 796 (Kemble, *Cod. Diplom.* A.D. 796).

him honour) are silent as to any gift by him of tithes of any sort or kind; as also is Matthew of Westminster, who followed them. Of the story, therefore, on that subject, such as it is, the author of Bromton's Chronicle seems to have been the inventor; and, as that story says nothing about any 'law made by Offa, whereby he gave to the Church the tithes of all his kingdom,' and as the report of the proceedings of the Legatine Council of Chalchyth in A.D. 785-787 was unknown to the world until its publication in the latter part of the sixteenth century, it is impossible to search for an explanation of it in those proceedings.

# CHAPTER III

## SECOND PERIOD—LEGATINE INJUNCTIONS OF CHALCHYTH, A.D. 785-787

### § 1. *Article as to Tithes*

NOTHING which bears upon the history of tithes in England, beyond the simple inculcation of their payment as, in the view of the Church of that day, a religious duty, is to be found in the twenty Injunctions or Articles,[1] delivered in the name of Pope Adrian I. by his legates, at the Legatine Councils held in this country in A.D. 785-787. Before entering into the question of the general nature and character of those Injunctions, it may be convenient to give a translation of the particular article (the seventeenth),[2] in which alone tithes are mentioned, and which also relates to some other subjects:

'The seventeenth Article:—Of giving tithes, as it is written in the law, "Thou shalt bring the tenth part of all thy crops or first-fruits (*frugibus seu primitiis*) into the house of the Lord thy God." Again, by the prophet, "Bring (he says) all the tithes into my barn, that there may be meat in mine house; and prove me now herewith, if I will not open unto you the windows (*cataractas*) of heaven, and pour you out a blessing,

[1] Haddan and Stubbs, *Councils*, vol. iii. pp. 447-459. (The number of these Injunctions is stated as twenty-nine, by an error overlooked in correction, in *Defence of the Church*, etc., p. 129.) [2] *Ibid.*, p. 456.

even to abundance (*usque ad abundantiam*); and I will rebuke the devourer for your sakes, who eateth and spoileth (*qui comedit et corrumpit*) the fruit of your ground, and your vineyard shall no more be barren (*et non erit ultra vinea sterilis*) in the field, saith the Lord." As saith the wise man: "No man can give a true alms of that which he possesseth, unless he hath first separated to the Lord what He from the beginning has appointed for man to render Him." And through this it commonly happens that he who does not give a tenth is himself reduced to a tenth. Wherefore also we solemnly lay upon you this precept, that all be careful to give tithes of all that they possess, because that is the special part of the Lord God (*quia speciale Domini Dei est*); and let a man live on the nine parts, and give alms; and we advised, that this should rather be done secretly, because it is written, "When thou doest thine alms, do not sound a trumpet before thee."

'We also forbade usury; for the Lord said to David that the man should be "worthy to dwell in His tabernacle who had not given his money upon usury." Augustine also saith: "No one has unjust gain without just loss. Where gain is there is loss; it is gain in the chest, but loss in the conscience."

'We ordained also (*statuimus*) that men should set forth (*statuant*) equal measures and equal weights for all, it being said by Solomon, "Weight and weight, measure and measure, the Lord hateth"; that is, that no man do sell to another by a different weight or measure from that wherewith he buys, because everywhere God "loveth justice," and "His countenance beholdeth equity."'

I should have thought that the terms of this article were sufficient to speak for themselves; that their character is evident; being that of pastoral precept, not legal enactment. But a disposition has been manifested in certain quarters to claim for this Injunction (accepted, as in some sense it undoubtedly was, by the kings of Northumbria and Mercia) the character of a civil enactment for the payment of tithes. An authority which I hold in much respect has

been supposed to give some countenance to that view. The subject, therefore, of the Legatine Mission, Synods, and Injunctions, of A.D. 785-787, ought to be fully examined.

## § 2. *Causes of the Legatine Mission.*

The causes which led Pope Adrian I. to send George, Bishop of Ostia, and Theophylact, Bishop of Todi, as his legates to this country, may be collected from known facts with reasonable certainty. For nearly a century the Anglo-Saxon Church had been governed by native prelates, some of whom visited Rome; and letters from the Roman see (*e.g.* that of Pope Zacharias[1] in Archbishop Cuthbert's time) were from time to time received by the English Church. But no Papal legate had visited England since the time of Augustin; and the English Church was practically independent. Pope Adrian was a statesman; he had obtained from Charlemagne protection, friendship, and large territorial possessions. And he had paid his price for them. He knew, probably, that the relations of Charlemagne and Offa, whatever professions might be made on either side, were not very cordial; he may have felt a doubt how far his own security might be affected by any policy intended to improve them, unless he could succeed in conciliating to himself the goodwill of both kings. That he was seriously apprehensive, down to A.D. 784 or 785, of intrigues on the part of Offa to depose him from the Papal throne, and to obtain Charlemagne's consent to the substitution of a Frank Pope, is clear from a letter[2] which he wrote about that time to Charlemagne, from whom he had received reassuring messages upon the subject. This was the position and the state of mind of the Pope.

[1] Haddan and Stubbs, *Councils*, vol. iii. p. 360. [2] *Ibid.*, p. 440.

On the other hand, King Offa had an object of his own to accomplish, in which the Pope's assistance was important to him, if not indispensable. He was jealous of a primacy over the churchmen of his kingdom, the seat of which was beyond his own border, and easy of access from the continent of Europe. He desired to deprive the see of Canterbury, not of precedence, but of power; and to make Mercia ecclesiastically independent, with a metropolitan of its own, whose primacy should extend to the bishoprics of East Anglia, which, though not yet annexed to Mercia, was under its influence. It is not necessary, for an explanation of this policy, to suppose (as one of the chroniclers[1] says), that Offa feared an invasion of England by Charlemagne, and distrusted the fidelity of Jaenberht, then Archbishop of Canterbury; or (with Dean Hook[2]) that Archbishop Jaenberht was intriguing with the Frank king, and aspiring, in imitation of the Pope, to civil sovereignty in Kent, the direct line of whose kings had become extinct. The contests for supremacy, and the changes in the balance of power, within England itself—Mercia aiming at, and seeming at that time likely to obtain, the position which, under Egbert, was not long afterwards obtained by Wessex,—and Kent being a small kingdom, never likely to be again independent, yet not in acknowledged dependence on

[1] The author of the *Lives of the Two Offas* (Matt. Paris, ed. 1640, p. 21). Other chroniclers (Diceto, Wendover, and Matthew of Westminster) speak of enmity on the part of Offa towards the Kentish men; and the language of the letter of Offa's successor, Kenwulf, to Pope Leo III., in A.D. 798, asking for the restoration of the see of Canterbury to its former rights, is to the like effect: '*Cujus dignitatis honorem primum Rex Offa, propter inimicitiam cum venerabili Janberto et gente Cantuariorum acceptam, avertere, et in duas parochias dissipare, nisus.*' (Haddan and Stubbs, *Councils*, vol. iii. p. 522.)

[2] *Lives of Archbishops*, 3rd ed., vol. i. pp. 245, 246.

Mercia, and liable, from its situation, to fall at any time under West Saxon influence,—these were sufficient reasons for Offa's wish that the ecclesiastics of his kingdom should be placed under an archbishop of his own at Lichfield. The opportunity was favourable, because of the preponderance at that time of his power; he could reckon upon the acquiescence, if not support, of the other kings south of the Humber; and Kent, without any acknowledged king, could not offer an effectual resistance. The Pope, however, must give the pall, to place a new archbishop in Mercia upon an equality with other metropolitans; and for that it was necessary to obtain the concurrence of Rome. Offa therefore (as we know from that letter of Pope Adrian to Charlemagne, which has been already mentioned) sent a special mission[1] to Rome, accompanied and recommended by messengers from Charlemagne; and the Pope (as he said), to please Charlemagne, agreed to comply with the wishes which, on Offa's part, they expressed. The legatine mission to England soon followed; which again was accompanied by a French abbot,[2] sent by Charlemagne to give such aid to the legates as might be in his power.

[1] William of Malmesbury (*Gesta Regum*, Hardy's ed., p. 119) and the author of the *Lives of the Two Offas* (Matt. Paris, ed. 1640, p. 21) speak of this mission from Offa to Rome, and of its object.

[2] Wigbod, of whom nothing else is known (Haddan and Stubbs, vol. iii. p. 448; and see *ibid.*, p. 461, note). He accompanied the chief legate (Bishop George) into Northumbria, and it is probable that he may have been a friend of Alcuin's, sent at his instance to secure for the legates a favourable reception in the northern kingdom, with which Alcuin was more closely connected by birth, education, and friendship than with other parts of England. Eanbald, then Archbishop of York, was succeeded in A.D. 796 by another prelate of the same name, who was a friend and correspondent (perhaps a pupil) of Alcuin; (see Haddan and Stubbs, *Councils*, vol. iii. pp. 500 note, 501, 505, 507, 534).

It may be concluded, under these circumstances, that the understanding arrived at in Rome was this. The Pope was to send representatives to England, with a commission authorising them to inquire into the state and condition of the English Church, and to give such pastoral counsels as might seem to him necessary. Friendly relations between the Roman see and that Church already existed, but they were to be more firmly established; and the legates were to be empowered, on the Pope's behalf, to assent to the King of Mercia's wishes for the creation of a new province, separate from Canterbury, with a metropolitan see at Lichfield, if the concurrence of a provincial synod could be obtained.

For the conclusion of this arrangement, King Offa's ambassadors doubtless employed such means as they and their master considered likely to be effectual. The use of questionable means is alleged in the solemn Act of the Council of Cloveshoo,[1] by which the see of Canterbury was restored to its former authority in A.D. 803; (Pope Leo III. and Kenwulf King of Mercia then reversing the policy of their predecessors); and the chroniclers tell us, that large sums of money were spent on the negotiation. The monk of St. Alban's,[2] Offa's biographer and encomiast (though in names and other particulars certainly incorrect), was probably not far from the mark, when he said that Offa did not rely only on his confidence in the Pope's 'pre-eminent sanctity,' or upon the 'discretion and elo-

[1] Haddan and Stubbs, *Councils*, vol. iii., p. 543: '*Cartam a Romanâ Sede missam per Adrianum Papam de palleo et de Archiepiscopatus Sede in Liccedfeldensi monasterio, cum consensu domini Apostolici Leonis Papæ præscribimus* [non] *aliquid valere, quia per subreptitionem et male blandam suggessionem adipiscebatur.*'

[2] *Lives of the Two Offas* (Matt. Paris, ed. 1640, p. 21).

quence' of his own ambassadors; but that he 'knew what it was that the Romans wanted' (*noverat enim Rex desideria Romanorum*); and carried his point by means of gifts.

The impost called 'Peter's pence' may, not improbably, have been part of the price paid for the Pope's assistance on that occasion. This indeed is not mentioned by any chronicler older than Henry of Huntingdon[1] (A.D. 1135-1184); and he assigns to it an earlier date. Supposing dates to be mistaken, he and the chroniclers who followed him (in this respect) in the thirteenth and fourteenth centuries—Diceto,[2] Hoveden,[3] and Higden[4]—are all the more credible, because none of them spoke of any journey of Offa to Rome. That impost was certainly subsisting in and before Edward the Elder's time.[5] It is said, by some writers,[6] to have been imposed in Wessex by King Ina, early in the eighth century; and to have been in the ninth century confirmed and extended by King Ethelwulf.[7] If the story as to Ina's grant of Peter's pence was true, there is no reason for disbelieving the like story as to Offa; and it is not improbable, that his ambassadors, who conducted the negotiation at Rome which led to the legatine mission, may have offered that contribution, on Offa's part, to the Papal treasury.

[1] Book iv.; under A.D. 755 (Forester's translation, 1883, p. 133).

[2] Savile's *Hist. Angl. Script. X.*, p. 446. (Diceto connects the gift with the later foundation of St. Alban's Abbey, as do also Wendover, the author of the *Lives of the Two Offas*, Bromton, and Matthew of Westminster.)

[3] Riley's transl., 1853, p. 24.

[4] Gale's *Rer. Angl. Script. XV.*, p. 250. (Hardyng and Polydore Vergil also mention Offa as author of the impost.)

[5] See Thorpe's *Ancient Laws and Institutes*, vol. i. p. 171.

[6] *E.g.* Higden (Gale, *Script. XV.*, *supra*, under A.D. 728).

[7] *E.g.* Higden (Gale, p. 253); Bromton (Gale's *Script. XX.*, Oxford 1691, p. 808).

The fact of the legatine mission, and its object, as declared on the Pope's part, are attested by two of our earliest and most trustworthy chroniclers—the 'Anglo-Saxon Chronicle,'[1] and Symeon of Durham.[2] Of the object, both speak in almost the same words:—'to renew the faith and the peace which St. Gregory had sent us by the Bishop Augustin,' is the phrase of the former; 'renewing among us the ancient friendship and Catholic faith which the holy Pope Gregory taught by the blessed Augustin,' of the latter. Symeon mentions 'the Venerable Bishop George,' as holding the first place in the legation. He assigns A.D. 786 as the date: the Anglo-Saxon Chronicle gave A.D. 785. Henry of Huntingdon[3] put it in the second year of Beohrtric, King of Wessex, (successor of Kenwulf of Wessex); which could not be earlier than A.D. 787. The Anglo-Saxon Chronicle, and Florence of Worcester,[4] mention, under the same date (A.D. 785), a 'contentious,' or 'litigious,' synod at Chalchyth, at which 'Jaenberht gave up some portion of his bishopric, and Higbert was elected by King Offa, and Egferth (Offa's son) was consecrated king.' Those writers do not speak of the legates as present at that synod: but Huntingdon says[5] that it was held by the legates. There is a letter extant from Pope Leo III.[6] to Offa's successor, Kenwulf of Mercia, in which that Pope spoke of a vow made by Offa to

[1] Under A.D. 785. (The passage is extracted in Haddan and Stubbs, *Councils*, vol. iii. p. 444.)

[2] Savile's *Hist. Angl. Script. X.*, p. 110 (Haddan and Stubbs, *Councils*, vol. iii. p. 443).

[3] Forester's translation, 1853, p. 137 (see Haddan and Stubbs' extract from the original, *Councils*, vol. iii. p. 445).

[4] A.-S. Chron., *ubi supra*. Florence, under A.D. 785 (Thorpe's ed. 1848, p. 61).

[5] *Ubi supra*.

[6] Dated A.D. 798 (Haddan and Stubbs, *Councils*, vol. iii. p. 523; see p. 525).

send a certain sum yearly to Rome for charitable purposes, 'in the presence of a synod, as well of all the bishops, princes, and great men, and the whole people dwelling in the island of Britain, as of our most trusty messengers, the most holy Bishops George and Theophylact.' Higbert of Lichfield assumed the style of Archbishop (in charters still extant,[1] which he signed) during the course of the year A.D. 788; having waited, probably, until that time for the pall from Rome. He continued to hold the same dignity during the rest of Offa's life, and for several years afterwards; retiring from the episcopate,[2] when Pope Leo III. reversed the action of his predecessor, and restored to the see of Canterbury its former pre-eminence.

### § 3. *Character of the Legatine Injunctions.*

It is not an uncommon thing for questionable propositions to be advanced as admitting of no doubt,—sometimes by persons whose judgment is entitled to great respect. It becomes those who call them in question to avoid mere strength of assertion, and to rely on the force of their reasons.

I find it stated, as the opinion of two learned and excellent scholars,[3] to whose labours all students of English ecclesiastical history are deeply indebted, that the decrees of the councils held under Pope Adrian's legates 'were accepted as binding by the Kings and Witan of Mercia and Northumbria, and probably by the Witan of Wessex also;' and (as to the article relating to tithes) that 'there can be no doubt that the legatine canon, as approved by the

[1] Haddan and Stubbs, *Councils*, vol. i. p. 446, note (and see the charters in Kemble's *Cod. Diplom.*, there referred to).

[2] He signed the Acts of the Synod of Cloveshoo in A.D. 803, as *Abbot*, after Aldulf, then Bishop of Lichfield. (See Haddan and Stubbs, *ibid.*)

[3] Haddan and Stubbs, *Councils*, vol. iii. p. 637, note.

Kings and Witan, had the force of law; although it is uncertain by what means the law was enforced, or whether it was enforced at all.'

The word *canon* is very flexible, when applied to the Acts of ecclesiastical synods; it would be idle to demur to that phrase if it stood alone. If, by 'law,' canon law only were meant, I might content myself by saying that sanctions, of some kind, seem practically necessary to the idea of law; and that the matter of these (so-called) 'canons' does not agree with my conception, even of canon law. But if (as some have understood) more than this is meant by the words which I have quoted,—if the 'law' intended be a civil enactment, or a civil confirmation of an ecclesiastical law by a secular legislature—then I not only doubt, but I am obliged to dispute the proposition. I think I can show good reasons for my belief that it is erroneous and untenable:—reasons depending partly on external, and partly on internal evidence.

### § 4. *The Legates' Report: how known.*

The external evidence is that contained in the report made by the legates themselves (or rather by George, Bishop of Ostia, the head of the mission) to the Pope.

It is remarkable, that our knowledge of this document is derived entirely from the *Magdeburg Centuries*,[1] published in A.D. 1567 at Basle by an association of Protestant writers, in a voluminous compilation, relative to the church history of the twelve first centuries. They have told us nothing about the manuscript which they used; what was its antiquity, or its place of custody; or how it

[1] *Ecclesiastica Historia, per aliquot studiosos et pios viros in urbe Magdeburgica*' (Basileæ, 1567, Centuria VIII., cap. 9, pp. 574, 575, under the heading '*Alia Synodus Anglica*').

came to their knowledge. Its proper place of custody would seem to have been in the archives of the Vatican, to which they were not likely to have access. If it (or any original or copy of it) were now in the Vatican, the research of later scholars would (I suppose) long since have traced it out, and placed it, in a complete form, and with all the aids of criticism, before the world; but there is no reason[1] to believe that it has ever been seen or known since the time of the Magdeburg 'Centuriators.' I have said this, not as doubting its genuineness; for I concur without hesitation in the opinion,[2] that it contains sufficient internal proof of authenticity; but because it is not probable that, if the Injunctions which we now know from this source only had entered into the body of the public law of the three greatest Anglo-Saxon kingdoms of the eighth century, they would, in this country, have entirely disappeared.

I ought not to be understood as suggesting, that no copies of these Injunctions were formerly in the hands of Anglo-Saxon ecclesiastics and men of learning. From the nature of the case, that could hardly be; and it is clear, as the matter stands, that they were in the hands of Archbishop Odo in the tenth century; who said that he compiled those Injunctions of his own, which have been miscalled *canons*,[3] 'from the former injunctions of illustrious men.' In that compilation there is one article (the tenth, as to tithes[4]) which is an abridgment of the corresponding part of the seventeenth article of the legatine synods; and in the second article (as to kings), the third (as to bishops), the seventh (as to marriages), and the

[1] Haddan and Stubbs, *Councils*, vol. iii. p. 461 (first note). [2] *Ibid.*

[3] Spelman's *Concilia*, vol. i. p. 415; Wilkins' *Concilia*, vol. i. p. 212; Johnson's *Laws and Canons*, vol. i. p. 358 (Oxford ed. 1850).

[4] Johnson's *Laws and Canons*, vol. i. p. 363 (Oxford ed. 1850).

eighth (as to unity), other things[1] are also taken directly from the same legatine Injunctions. Not only did Archbishop Odo so partially reproduce (without naming) them; but he is a witness to their character, as lessons of spiritual admonition and instruction, not laws. He prefixed to his compilation (after an invocation of the Holy Trinity) this preamble:[2]

'Though it be a bold presumption to give documents of pious exhortation, without having any merits of my own; yet, because a spiritual prize is promised to them that strive and take pains in the race of this life, by the Author of gifts, the Spirit; therefore I, Odo, the lowly, and meanest of those promoted to the honour of a pall, and of being a chief prelate, have resolved to put together in this paper some institutions not unworthy of any worshipper of Christ, which I found to be of the greatest authority, from the former injunctions of illustrious men, to the consolation of my lord the king, that is Eadmund, and of all the people subject to his most excellent empire. Therefore I most devoutly beseech, and with clemency exhort the minds of the hearers, that they inwardly graft them in their hearts by frequent meditation, whenever they hear them rehearsed; and thus, at the time of harvest, gather for themselves the most peaceable fruit, by the manifold exercise of good works.'

## § 5. *The Legates' Narrative.*

I pass to the narrative of the legates, which is not, in my judgment, imperfect; neither does its termination seem to me abrupt.[3] If it has no formal conclusion, neither has it any formal commencement; the 'Centuriators' omitted

[1] See Appendix B for a collation of the Latin passages in Odo's and the legatine Injunctions.

[2] Johnson's *Laws and Canons*, vol. i. p. 358.

[3] See Haddan and Stubbs, *Councils*, vol. iii. p. 462 (last note, in which it is suggested, that the report is imperfect, because it ends abruptly, without any formal conclusion; and that, if perfect, it might have been expected to contain all the other proceedings of the Synod of Chalchyth).

both; and it was consistent with their method to do so. In all other respects the document is complete in itself. The date which the 'Centuriators' assigned to the mission is A.D. 786; they described its objects very much as the English chroniclers did: 'To travel through and visit this island, and to confirm the authority of the Roman pontiff, acquired there formerly through the mission of Augustin'; and they introduced the report with the words, 'What they did and effected, they themselves thus explain.'[1]

The material points in the narrative are, that, having landed in England, and having seen Archbishop Jaenberht at Canterbury, and given him such information as they thought necessary, they went to Offa's palace, where they were well received; meeting him, and also Kenwulf,[2] King of Wessex, who both promised the amendment of some matters of which the Pope had spoken in his letters accrediting the mission. A consultation followed, not with those kings only, but also with the bishops and lords of the land (*pontificibus et senioribus terræ*); which resulted in Theophylact following the court of Offa into Mercia, with the intention to visit Wales; and in George (with Charlemagne's Abbot Wigbod[3]) going to York, from

[1] *Ecclesiastica Historia*, etc., pp. 574, 575.

[2] Kenwulf was assassinated A.D. 786. But, even if that (and not A.D. 785, as stated in the Anglo-Saxon Chronicle) was the year of the legates' arrival in England, the meeting recorded by the legates might well take place before his assassination. The mention of his name, therefore, creates no difficulty. He is not stated to have been present at either Council.

[3] See *ante*, p. 148. It is worth noting that Offa did not send any ambassadors with the legates to the King of Northumbria, but the latter king sent ambassadors to Offa on Bishop George's return. It may be conjectured, that Theophylact remained with Offa to complete the negotiations as to that king's own business; and that, until that was settled to his satisfaction, Offa was not disposed to give active assistance to the Pope.

whence, through Archbishop Eanbald, messengers were sent to Aelfwald, King of Northumbria. He convened a council, which was attended by all the principal people of those parts, clergy and laymen; and the legate then read the Injunctions prepared (as the report said), as to all the matters which were understood to need correction. All the several points were explained in their order; and those who were present, professing submission to the Pope, as represented by the legates, unanimously promised obedience (*tam admonitionem vestram, quam parvitatem nostram, amplexantes, spoponderunt se in omnibus obedire*). The Pope's letters were then read; the legate exhorting (*contestantes*) his hearers to keep, and to cause those under them to keep, the Pope's 'decrees.'[1]

The text of the Injunctions (twenty in number) follows,[2] after which the narrative is resumed:

'These decrees, most blessed Pope Hadrian, we propounded (*proposuimus*) in public council, before King Aelfwald and Archbishop Eanbald, and all the bishops and abbots of that region, and the senators, dukes, and people of the land, who (as we have already said) vowed that they would keep them in all points to the utmost of their power, the Most High in His mercy helping them;' and this vow they confirmed by signing the sign of the Cross, both on the legate's hand as representing the Pope, and on the paper containing the Injunctions, which they subscribed.[3]

The names of the subscribers are given at length. They were the king, and all the bishops of the province of York; also an Irish bishop (of Mayo), and another bishop, whose see was not specified (he is supposed to have been

[1] Haddan and Stubbs, *Councils*, vol. iii. pp. 447, 448 (where the introductory statement of the Magdeburg 'Centuriators' is omitted.

[2] *Ibid.*, pp. 448-459.

[3] *Ibid.*, pp. 459, 460.

Welsh), and who signed by proxy. Two abbots and three lay noblemen also signed.

'This done,' the legates returned southward, accompanied by two 'readers,'[1] envoys of King Aelfwald and his archbishop, who are stated to have brought 'the same decrees' with them 'into the council of the Mercians, where the glorious King Offa and the senators of the land had met together with Archbishop Jaenberht of Canterbury and the other bishops of those parts.' There, 'in the presence of the council,' all the articles (*capitula*) were read through and explained, both in Latin and in Saxon; and all with one voice thankfully promised, 'in answer to the Pope's apostolical admonitions (*apostolatus vestri admonitionibus*), that by God's help they would in all things observe those constitutions (*statuta*) according to the degree of their strength' (*juxta qualitatem virium*);—confirming that promise (as in the north) by the sign of the Cross upon the legate's hand as the Pope's representative, and also before their names subscribed to the paper; which were those of King Offa, and of the archbishop and all the bishops of the province of Canterbury, four abbots, and four lay noblemen; all (in the report) set out at full length, with the forms of subscription.[2] The sees of the Archbishop of Canterbury, and of the Bishops of Lichfield, Lindsey, and Leicester, were mentioned after their names; those of the other bishops were not; but they are all sufficiently identified[3] by their signatures to contemporaneous charters, still extant.

[1] Those 'readers' (*lectores*) are in the report called 'illustrious men.' The 'reader' was the lowest but one of the five degrees of clerks in minor orders. [2] Haddan and Stubbs, *Councils.*, vol. iii. pp. 460, 461.

[3] *Ibid.*, p. 462, note. In Johnson's *Laws and Canons*, vol. i. p. 282 (Oxford ed. 1850), there is a note, by John Johnson, saying that 'no regard is to be had to these subscriptions; the few names that are

### § 6. *Character and Constitution of the Synods.*

In these proceedings there seems to be nothing inconsistent with the nature of legatine synods, at which the active part was that of the Pope by his legates, others who were present being passive, and merely promising dutiful obedience. For such a purpose, bishops who were strangers to the province might very well be present, or might be represented by proxies, as happened at the northern council. But how could those strange bishops take part in an act of civil legislation for the kingdom of Northumbria? How could bishops of Kent, East Anglia, and Wessex take part in a witenagemot, passing secular laws for the kingdom of Mercia? How could Wessex be bound by secular laws passed at an assembly presided over by the Mercian king and the Kentish archbishop, and containing East Anglian and Mercian bishops, without any representation of Wessex, except by the Bishops of Winchester, Sherborne, and Selsey? What evidence is there that, for all or any of those kingdoms, properly constituted witenagemots were held, to give the 'force of law' to what was then done?

genuine are yet so spelt that the men, if they were now alive, would scarce own them.' If the names, or any of them, were forgeries, it would be a strong argument against the authenticity of the whole document; if, on the other hand, they are all capable of being identified with the names of persons who were really English bishops (and one Irish) at that time, notwithstanding the transformation of the Anglo-Saxon names into Latin, this seems conclusive in favour of the document, even if its credit had not been otherwise supported. I had myself, before reading Mr. Haddan and Bishop Stubbs' note, gone carefully through the episcopal signatures to all the charters from A.D. 780 to 803 in Kemble's *Codex Diplomaticus*, and had arrived at the same identification of the signatures, except that of the Irish and the (supposed) Welsh bishop.

### § 7. *Internal Evidence.*

I pass to the consideration of the internal evidence; which appears to me to prove conclusively, what might have been inferred from the narrative;—that those Injunctions had, and claimed, the authority of the Pope as a spiritual monitor and teacher, and that alone; and that the assent given to them by the kings, bishops, and laymen, to whom they were synodically delivered, had nothing in common with legislation or ratification on the part of civil lawgivers. The character of the Injunctions is, from first to last, pastoral; sometimes it is more, sometimes less, authoritative; the tone is that of an apostolical charge or a pulpit exhortation; they are admonitions and precepts, not laws. Of this character, the seventeenth article itself, which relates to tithes, etc., is an example. The first, third, eleventh, and twentieth, relating to faith, the duties of bishops, the duties of kings, confession, and penitence, are still more so. All these, and some others, consist chiefly of Scripture texts, with a few quotations from the Fathers. There is not one article which deviates in substance from this general character; not one which is enforced by temporal sanctions or penalties. The motives held out, the encouragements and threatenings, the rewards and punishments, are all spiritual.

The form and style of address is that of a chief pastor to his flock. Most of the articles were obviously brought, ready prepared, from Rome; it is not difficult to distinguish the additions made in this country, in consequence of what the legates saw or heard.

1. The first[1] article begins: '*Admonishing* in the first

[1] Haddan and Stubbs, vol. iii. p. 448.

place' (*Primo omnium admonentes*). It relates to the Nicene faith, and directs, that all priests be examined as to their faith every year by their bishops in diocesan synods, 'so that they may in all things confess, hold, and preach the apostolical and universal faith of the six councils, approved by the Holy Spirit, as it has been delivered to us by the holy Roman Church; and, if occasion be, may not fear to die for it; and that they receive all whom the holy universal councils have received, and reject and condemn from their hearts all those whom they have condemned.' This is no secular law. Was it ever law in the Anglo-Saxon kingdoms, even canon law, that every priest should be examined annually by his bishop, in a diocesan synod, concerning his faith?

2. The second[1] article begins: 'In the second article *we taught*' (*Secundo capitulo docuimus*), 'that baptism be administered according to the ordinance of the canons, and at no other time, except for great necessity; and that all, generally, should know the Creed and the Lord's Prayer.' It proceeds to instruct sponsors in their duties, and it ends: 'It is, therefore, our precept to all the people generally, that this should be committed to memory' (*generaliter omni vulgo præcipimus hoc memoriæ mandari*).

3. The third[2] article, a long exhortation to the bishops as to their duties, begins: 'In *our third discourse*, we insisted' (*Tertio sermone perstrinximus*).

4. The fourth[3] article begins: '*The fourth discourse*,' (*Quartus sermo*). It orders the bishops to see that all canons live canonically, and monks regularly, and wear proper habits, not dyed with Indian colours, or costly; and it ends, 'As to which matter *we advise* (*suademus*) that the synodal

[1] Haddan and Stubbs, vol. iii. pp. 448, 449.
[2] *Ibid.*, pp. 449, 450. [3] *Ibid.*, p. 450.

edicts of the six universal councils, with the decrees of the Roman pontiffs, be often read,' etc.

5. The fifth[1] article relates to the election of abbots and abbesses from the inmates of the house, whenever fit persons may be found there, with the bishop's advice (passing over all royal or other patronage). It begins: 'The fifth article *admonishes*' (*Quintum caput admonet*).

6. The sixth[2] article (prohibiting the ordination of unfit persons as priests or deacons by bishops, etc.) is short, and in form authoritative. Its opening words are: 'The sixth *decree*' (*Sextum decretum*).

7. The seventh[3] is shorter still. 'In the seventh article' (*septimo capitulo*): 'That all public churches have their proper course of services reverently performed at the canonical hours.'

8. The eighth[4] is another short article, which cannot well be supposed to have had 'the force of law' in this country. 'In the eighth *constitution*' (*Octavo statuto*): 'That the ancient privileges conferred upon all churches by the holy Roman see be observed. But if, by the consent of wicked men, any should have been granted in writing against the canonical institutions, let them be plucked up' (*avellantur*).

9. And will any one be found to say that it was made an offence against secular law in this country for an ecclesiastic to take food secretly, when in good health? This, however, is forbidden 'by the ninth[5] *head*' (*Nono capite*); 'because it is hypocrisy and Saracenic' (*quia hypocrisis et Saracenorum est*).

[1] Haddan and Stubbs, vol. iii. pp. 450, 451.

[2] *Ibid.*, p. 451. [3] *Ibid.* [4] *Ibid.*

[5] *Ibid.* This was, obviously, a rule of discipline for monks or clerks living together in community.

10. By the tenth[1] article (*Decimo capitulo*), mass priests are forbidden to minister at the altar with bare legs. The faithful are enjoined to make such offerings that there may be bread and not a mere crust (*ut panis sit, non crusta*). And '*we forbade*' (*vetuimus*) the use of ox-horn for the chalice or paten. The legates also were offended at *seeing bishops in England judging secular matters in their councils, which they forbade* (*Vidimus etiam ibi episcopos in conciliis suis sæcularia judicare, prohibuimusque eos voce apostolica*); quoting St. Paul (2 Timothy ii. 4); and they made it their entreaty (*obsecravimus etiam*) that continual prayers should be offered for the Church.

Was this, also, a law enacted and brought into force for England? Was it from that time an offence against the laws of Northumbria, and of Mercia, and of Wessex, that bishops should judge in councils and courts of law (as they always did) as to secular matters?

11. The eleventh[2] '*discourse*' was to kings and princes (*Undecimus sermo fuit ad reges et principes*): and a 'sermon' it certainly was, such a sermon as could have come from Rome only. 'We admonished (*admonuimus*) the kings and princes to obey their bishops from the heart with great humility, because the keys of heaven are given to them, and they have the power of binding and loosing;'—an admonition enforced by numerous extracts from Scripture. Did that injunction make it the law of Mercia that Offa should humbly obey his bishops?

12. In the twelfth[3] '*discourse*' they laid it down (*Duodecimo sermone sanximus*), that, in the appointment of kings, no one should permit the consent of the wicked to prevail

[1] Haddan and Stubbs, vol. iii. pp. 451, 452. The part of this article beginning '*Vidimus*' etc., was doubtless added in England.

[2] *Ibid.*, pp. 452, 453. [3] *Ibid.*, pp. 453, 454.

(*nullus permittat pravorum prævalere assensum*); but that kings should be lawfully chosen by the priests and lords (*senioribus*) of the people, of those who were not born in adultery or incest:

'Because, as in our times, no one of adulterine birth can, according to the canons, be ordained priest; so neither can any one not born in lawful wedlock be the anointed of the Lord, king of all the kingdom, and his country's heir' (quoting the not very relevant text of Daniel iv. 17). 'Therefore we admonished (*admonuimus*) all the people, generally, to pray God to give grace to the king whom He himself chooses, and who is to be honoured of all (quoting several texts). No man is to take any counsel for the king's death, because he is the Lord's anointed; and if any one is privy to such a crime, if a bishop or a priest, let him be degraded, and cast down from his sacred heritage, as Judas was from the apostolate; and every one who shall have assented to such sacrilege shall perish under the eternal bond of our anathema, and, in the society of the traitor Judas, shall be burned with everlasting fires.' This, again, is enforced with Scripture texts and examples; and the article ends thus: 'It has often been proved by instances among yourselves,[1] that those who have caused the death of their masters, have prematurely ended their own lives, and lost both civil and spiritual rights (*utroque jure caruerunt*).'

Now, whatever may have been the constitutional law of any of those Anglo-Saxon states as to the qualifications necessary for the royal office (in which I do not doubt that legitimate birth was the rule, though there were notable exceptions to it); it was certainly not by this legatine injunction that it was enacted; nor was regicide less a civil offence before, than after this injunction. Even as to regicide, the penalties of which this injunction speaks are

[1] The part of this article as to regicide (perhaps the whole article) may have been added in England, where regicide had been frequent; the most recent instance being the murder (A.D. 786) of Kenwulf, King of Wessex, after the legates had seen him on their first arrival.

spiritual—degradation from the episcopal or priestly office, the Church's anathema, the pains of hell-fire.

13. The thirteenth[1] *admonition* was[2] (*Decima tertia admonitio fuit*) against unjust judgments, respect of persons in judgment, and taking gifts against the innocent; for which also many texts of Scripture were quoted. Whatever may have been the state of the Anglo-Saxon laws as to unrighteous judgments, nothing can have been added to them by this article.

14. The fourteenth[2] head (*Decimum quartum caput*) deserves quoting fully:

'Fraud, violence, and rapine are forbidden; and let no unjust or greater tributes than those established by the Roman law and the ancient customs of former emperors, kings, and princes, be imposed upon the Church of God; and let every one who desires to communicate with the Holy Roman Church, and the blessed Peter, the Prince of the Apostles, be careful to keep himself wholly clear from this fault of violence. Let there be concord everywhere, and unanimity between kings and bishops, ecclesiastics and laymen, and the whole Christian people, so that there may everywhere be unity of the Churches of God, and peace continuing in the One Church, in one faith, hope, and charity, having One Head, which is Christ, etc.'

Will any one contend that the acceptance of this article at the legatine councils, and the subscriptions of those who subscribed to it, gave it 'the force of law' in the Mercian and Northumbrian kingdoms?

15. The fifteenth[3] 'head' (*caput*) is against incest and adultery; the anathema of the Church (that only) being denounced against those guilty of such acts, until they repent, and are reconciled to their bishops.

16. The sixteenth[4] 'head' (*caput*) says: 'The sons of har-

[1] Haddan and Stubbs, vol. iii. pp. 454, 455. [2] *Ibid*
[3] *Ibid.*, p. 455. [4] *Ibid.*, pp. 455, 456.

lots are by decree (*decreto*) debarred from lawful inheritance. For we judge by the apostolical authority, that sons born of adultery, or of nuns, are spurious and adulterine.' Nuns are stated to be spouses of Christ; and texts are quoted as to the heinousness of marrying with or corrupting them. Then the legates suppose some 'adulterine' person to be arguing with them: 'he will say, my mistress is not a slave, but free.' 'To these we reply, by the Apostle's authority' (*his autoritate apostolica respondemus*); quoting St. Paul (Romans vi. 16). And the article concludes: 'But, as it is written, either in Scripture or the evangelical doctrine, or in the decrees of the apostolical decisions (*decretis apostolicorum dogmatum*), concerning lawful marriages, and appointed times for marriage or abstinence therefrom,—we presume neither to add anything to, nor to take away anything from, those decrees: "But if any man seem to be contentious, we have no such custom, neither the Church of God."'

17. The seventeenth[1] article (*caput*) as to tithes, usury, and just measures and weights, has already been extracted.

18. The eighteenth[2] begins: 'The eighteenth head (*Decimum octavum caput*): Concerning the vow of Christians, that they perform it.' What follows consists entirely of Scriptural examples: Abel, Enoch ('*Remember* Enoch,' etc.), Abraham ('Why should I speak'—*quid loquar*—of Abraham, etc.), Jacob, Manoah ('Remember Manoah,' etc.), David, Solomon; and appropriate texts.

19. The nineteenth[3] appears to have been added by the legates, in consequence of information given them at York, 'that there were still remaining (in those parts) some faults,

[1] Haddan and Stubbs, vol. iii. pp. 456, 457; *ante*, p. 144.
[2] *Ibid.*, pp. 457, 458. [3] *Ibid.*, pp. 458, 459.

by no means small, of which the correction was necessary;' and the fact that it was so added seems to be denoted by its introductory words: '*We annexed* the nineteenth head' (*Decimum nonum caput annexuimus*), 'that every faithful Christian should take example from Catholic men; and, 'if there be any remnant of pagan rites (*si quid ex ritu paganorum remansit*) it should be plucked up, scorned, and rejected.' They proceed to condemn the practices of (1) tattooing—quoting a verse from Prudentius; (2) a pagan fashion of dress; (3) splitting the nostrils, tying up the ears, and docking the tails, of horses; (4) settling controversies by casting lots; and (5) eating horse-flesh. These customs are stigmatised as evil, and unfit to be practised by Christians; they seem to be condemned by the introductory words of denunciation; but not under even spiritual penalties.

20. The twentieth,[1] and last 'head' (*Vigesimum caput*) is introduced by the words, 'We *intimated* to all generally' (*omnibus generaliter intimavimus*). It consists wholly of an exhortation, enforced by texts, to conversion and repentance, confession of sins, and Holy Communion.

I think I have established, by the simple process of showing what the form and substance of these Injunctions, from beginning to end, really is, their true nature and character; and that further argument against the proposition that they, or any of them, were legislative enactments by kings and witenagemots of any Anglo-Saxon kingdom or kingdoms, would be superfluous.

[1] Haddan and Stubbs, vol. iii. p. 459.

## § 8. *Relation of the Legatine Injunctions to those of Cloveshoo*, A.D. 747.

It remains to correct an error into which the late Dean Hook[1] fell, when he described these Legatine Injunctions as 'little more than a repetition of the regulations made at the Council of Cloveshoo in the time of Archbishop Cuthbert.' They did, on one or two points, enjoin things which were also enjoined by those regulations; and an explanation of this may be found in the probability, that those injunctions of Archbishop Cuthbert's Council were based upon the letter of Pope Zacharias,[2] then read, but not now extant. Pope Adrian on those few points did, probably, repeat and renew the admonitions of his predecessor. But there is nothing in common between the rest—all, that is, but an insignificant part—of the legatine Injunctions, and the Acts of Archbishop Cuthbert's Council of Cloveshoo.

[1] *Lives of Archbishops*, vol. i. (3rd ed.), p. 251. Dean Hook also says, that the body of canons produced (by the legates) at Chalchyth was '*very similar to those that had been accepted in the kingdom of Northumbria.*' They were not *similar*, but the *same*.

[2] Haddan and Stubbs, *Councils*, vol. iii. p. 360.

## CHAPTER IV

### THIRD PERIOD—FROM OFFA TO EDMUND—RETROGRESSION AND DECAY

### § 1. *Ravages of the Danes*

To understand the change which passed over the Anglo-Saxon Church during the ninth century, and the condition in which it remained for a considerable part of the tenth, it is necessary to realise the effect of the Danish invasions.

The first serious havoc wrought by those invaders was in A.D. 792-793, when Lindisfarne was ruined, and a state of disorder introduced into Northumbria from which that kingdom never recovered. Alcuin's letters[1] to the churches of Lindisfarne, Wearmouth, and Jarrow, to Ethelred the Northumbrian king, his princes and people, and to King Offa, show the magnitude of that calamity, and the demoralisation consequent on it. 'See the holy places laid waste by the pagans; the altars defiled by perjuries; the monasteries violated by adulteries; the land foul with the blood of kings and princes.' He turned with hope to Offa, who had asked for a teacher, and to whom he sent one of his pupils: 'the light of wisdom, which in many places had been extinguished, might still flourish in Mercia.'

[1] Haddan and Stubbs, *Councils*, vol. iii. pp. 470, 472, 492; Migne's *Patrolog.* (Alcuin, vol. i. ep. 14, 15, and 49).

Offa was 'the ornament of Britain; the trumpet of preaching; a sword against the foe; a shield against the enemy.'[1] Offa died three years afterwards, and Alcuin, before long,[2] followed him. His hope was not to be fulfilled. The Danes returned, and continually gathered strength. Repelled for a short time by Egbert, they became terrible during the reign of Ethelwulf. They made their way to Canterbury and to London; they began to winter in Kent. The preamble to Ethelwulf's charter of A.D. 844[3] is a sharp cry of distress:

'We see that in these days, through the conflagrations of wars, the pillage of our wealth, the most cruel depredations of barbarous enemies laying waste the land, and the manifold tribulations, threatening us even with extermination, which we suffer from the pagan tribes, perilous times have come upon us.'

Under Ethelbert, his successor, the Danes ravaged Winchester, destroying its cathedral and other churches, and putting all the monks of the chapter to death. Under Ethelred I. they occupied York, and became masters of Northumbria. Then it was that those calamities occurred, of which Symeon of Durham[4] speaks:

'They went about everywhere, filling the whole country with blood and mourning; destroying the churches and monasteries far and wide with fire and sword, leaving nothing beyond bare walls.'

A few years afterwards they destroyed Lindisfarne (for the second time), Wearmouth, Jarrow, and other monasteries. The consequence of their ravages was that the see of Hexham was suppressed; Lindisfarne also (towards the

[1] Migne's *Patrolog.* (Alcuin, vol. i. ep. 49). [2] A.D. 804.

[3] See *post*, p. 200. (The date of this charter, as given generally in the Chronicles, is wrong, probably through confusion with that of A.D. 854.) [4] *Hist. Dunelmensis Ecclesiæ*, cap. 6, etc.

close of the century) was removed to Chester-le-Street, and afterwards to Durham. The same chronicler[1] says:

'Christianity was all but extinguished; very few churches were rebuilt; no monasteries were refounded for about two hundred years; the country people never heard the name of a monk, and were frightened at his garb, till some monks from Winchelcomb brought again the monastic way of living to Durham, York, and Whitby.'

The havoc wrought in Mercia, and especially in East Anglia, was not less. In 869-871 the great monasteries of Bardney, Crowland, Peterborough, Ely, and Repton were utterly destroyed, their libraries burnt,[2] their charters torn up, their inmates exterminated. The power of the Danes became absolute in East Anglia; and it extended (before Alfred's great victory in A.D. 878) as far west as Gloucester and Chippenham. The sees of Lindsey (for some time before in abeyance) and of Leicester were suppressed, being united nominally with Dorchester in Oxfordshire. The monasteries of Abingdon, Evesham, and Malmesbury were brought very low. Of the bishoprics left in the south, four were vacant at the time of Alfred's death;[3] there had been no West Saxon bishop for seven years; and some chroniclers add (what must be fabulous) that Pope Formosus published, or threatened, an interdict against England on that account. It was to apply a remedy to this state of things that Archbishop Plegmund, in A.D. 905, consecrated seven bishops in one day: four for vacant sees, three more for new sees, then erected, at Wells and Crediton, and for Cornwall —to which, in the following year (A.D. 906), another was

[1] *Ubi supra.*

[2] '*Ecclesiæ cum bibliothecis suis a Danis combustæ fuerant*' (Gervase of Canterbury, Stubbs' ed. 1880, vol. ii. p. 48).

[3] See Mansi, *Concil.*, vol. xviii. p. 111; and *note* (*ibid.*), as to the impossibility of the supposed interdict.

added at Ramsbury, for Wiltshire. This was in the time of Edward the Elder. What the state of England south of the Humber generally was in Alfred's time, he has himself described, in the preface to his translation of Gregory's *Pastoral*:[1]

'So utterly has learning perished in the English nation, that there are very few (*paucissimi*) on this side the Humber who can understand their common prayers in the English tongue, or translate any Latin writing into English. So few, indeed, have there been, that I cannot remember so much as one on the south side of the Thames, at the time when I succeeded to the kingdom.'

He contrasted this with the state of things which he had seen 'before everything was destroyed and burnt': 'churches, throughout the nation, well furnished with ornaments and books, and served by a multitude of the servants of God;' foreigners resorting to England 'for wisdom and learning,' instead of 'going, as they now did, to seek them abroad.'

### § 2. *Other Causes of Decay.*

There were other causes which contributed to produce this change. Even in the prosperous times of Boniface and Bede, many of the smaller houses, which had the name and the privileges of monasteries, were resorted to rather as sanctuaries or asylums from the insecurity of secular life, than for purposes of religion. In many of them there was sloth, ignorance, self-indulgence, and worse corruption.[2] These, if they escaped the ruin of the greater houses, probably sank into a worse state than before. And these

[1] Wise's ed. of *Asser* (Oxford 1722), p. 87. Alfred named, as exceptions, his own instructors, Archbishop Plegmund, Asser, and Grimbald, and his chaplain, John [Scotus Erigena].

[2] See Haddan and Stubbs, *Councils*, vol. iii. pp. 320, 321, 381.

evils were aggravated by the insular character of the Anglo-Saxon Church. Wasserschleben,[1] observing that 'throughout two centuries, English literature offers us no trace of an independent work,' such as the 'Penitentials' of Theodore and Archbishop Egbert, attributed this, 'in part, to the circumstances of dependence in which the English Church more and more stood towards the kings:'

'Ecclesiastical action was, in various and many ways, ruled and determined by peculiar laws. That union with Rome, which might have given protection to the Church, was very loose; and the influence of the Pope in the ecclesiastical affairs of England was, consequently, extremely small.'

## § 3. *Church Organisation.*

I have had occasion to speak of the suppression of some, and the establishment of other, bishoprics during this period. To that subject it will not be necessary to revert. It may be concluded, with reasonable certainty, that the destruction of so many monasteries by the Danes, depriving the Christian people of the means of receiving baptism and other ordinances of religion in the 'baptismal' churches, so destroyed, made laymen generally more dependent than they had previously been upon the priests and the services of private chapels or oratories; and that it was found necessary by the bishops to enlarge the powers and functions of such rural priests, and to consecrate, as burial-grounds, the precincts of some of those chapels or oratories. We shall find, in King Edgar's time,[2] proofs that this step towards the creation of the modern parochial system had then been taken.

[1] *Die Bussordnungen*, etc. (Halle 1851), preface, p. xlix.

[2] *Post*, p. 220.

### § 4. *Archbishop Wulfred's Canons.*

Of this, however, there is no trace in anything which remains to us of the ecclesiastical documents of the ninth century. There is, I think, proof that no such change had taken place before or during the first quarter of that century, in the canons of the only ecclesiastical council held during the whole third period—that of Chalchyth, under Archbishop Wulfred, in A.D. 816.[1] Five of those canons —the second, fifth, ninth, tenth, and eleventh—have a bearing, more or less direct, upon the point.

The second[2] of those canons relates to the form and manner of proceeding in the consecration of churches—called in it by the several names of *ecclesiæ*, *basilicæ*, and *oratoria*—all applicable to any buildings dedicated for the worship and service of God. The word *parochia* does not occur in that canon; nor is there anything in it from which the idea of a parish church (in any sense of the term) can be collected.

In the fifth canon,[3] the word *parochia* is used to include any assigned sphere of local duty, from the diocese of a bishop to any mission-field of a priest acting under proper authority. The object of that canon was to prevent Irish clergy (*Scoti*) from officiating in English churches. This it interdicted, on the ground of the impossibility of ascertaining that they had been properly ordained. And then followed (argumentatively) the passage in which the word *parochia* occurs:

'We know how the canons enjoin that no one of the bishops or priests attempt to invade another's "parish" (*paro-*

[1] Haddan and Stubbs, *Councils*, vol. iii. p. 579.
[2] *Ibid.*, p. 580. [3] *Ibid.*, p. 581.

*chiam*), without the consent of the bishop having authority there (*proprii episcopi*). So much the more are men of alien races to be repelled from the exercise of the sacred offices of the ministry (*sacra ministeria*), who are under no metropolitans, and pay them no respect.'

The reference here to 'the canons' is sufficient proof that, by *parochia*, a parish of the modern kind was not meant.

The ninth[1] canon (relating to synodical judgments, and to the manner of their authentication and publication, by archbishops and bishops in their several dioceses) used the word *parochia* twice, in both instances unequivocally for the diocese of an archbishop or bishop.

The tenth[2] related to the funerals of deceased bishops:

'It is commanded, and we appoint this firmly to be observed, both in our own days, and in future times by all our successors, who after us shall be appointed to the same sees, that as often as any one of the bishops shall depart this life, then we enjoin (*præcipimus*) the division and distribution of the tenth part of his substance, of whatever it consists, among the poor for the benefit of his soul,—whether flocks or herds, or sheep and swine, or even what is in the cellars (*in cellariis*); and further, that liberty be given to every English-born man (*Angliscum*), who in his days has been brought under slavery; so may he earn the reward of his labour, and the remission of his sins. Let there be no contradiction, in any point, by any person, to this article (*capitulo*); but let it rather, as is most meet, receive augmentation from our successors; and let it be honoured and held in remembrance for ever hereafter, throughout all the churches subject to our rule:—at all events, the prayers and alms, upon which we have specially agreed among ourselves (*condictam habemus*)—that at once, in every diocese, and in all the churches (*per singulas parochias, singulis quibusque ecclesiis*), the whole company of God's

[1] Haddan and Stubbs, *Councils*, vol. iii. p. 583. [2] *Ibid.*

servants (*omnis famulorum*[1] *Dei coetus*) shall assemble at the sound of a bell in the church, and there all together (*pariter*), sing thirty psalms for the soul of the dead; and, after that, each bishop and abbot is to cause 150 "psalteries" (*psalterios*), and 120 masses, to be celebrated; and to set free three men, distributing to each of them three shillings (*solidos*): and all the servants of God (*singuli servorum Dei*) are to keep fast that day; and for thirty days, at the canonical hours, after the full course of the prescribed services, the Lord's Prayer is to be sung for him:—all of which being done, on the thirtieth day from his death they are to have a refection, as good as that which they are wont to have on the birthday of each of the apostles. And let them, through all the churches, pray as faithfully for him as they would for those of the household of faith among them (*pro eorum domesticis fidei*): that so, by the grace of such common intercession, they may earn for themselves a common share with all the saints in God's eternal kingdom.'

It is manifest that, in this canon, *parochia* means *diocese;* and that the churches spoken of were conventual, having bishops or abbots at their head, with bodies of monks or clergy (*famulorum*, or *servorum Dei*)[2] living together in community; such as there were (generally) in the old 'baptismal' churches, and such as there would not be in any parish churches of the modern kind. And it is to be observed, in the same connection, that three other canons of this series related to monasteries, while there were none applicable to parish churches of the modern kind, or to the appointment or the duties of priests in charge of them.

The remaining canon (the eleventh[3] and last), in which

[1] This expression, and '*servorum Dei*,' signifies the monks, etc., of convents (see Sharon Turner's *History of the Anglo-Saxons*, 5th ed. 1828, vol. i. p. 493).

[2] The terms of King Ethelwulf's charter of A.D. 844 are similar, and lead to the same inference, as still applicable to Anglo-Saxon churches generally, at that time (see *post*, p. 201, note).

[3] *Ibid.*, p. 584.

the word *parochia* also occurs, uses it distinctly for diocese :

'No bishop is to invade the diocese (*parochiam*) of another, or to draw to himself anything belonging to the ministry of another bishop, in the consecration of churches, or the ordination of priests or deacons, except the archbishop only, who is the head of all the bishops of his province. The rest are to be content with their own, or to minister by the consent or license of the bishop in whose diocese (*diocesi*) any one of them may be; and if any do otherwise, they are to be corrected by the archbishop's judgment.'

### § 5. *Opinions of Selden and Lingard.*

If, in thus arriving at the conclusion that at the beginning of the ninth century there was no approach to parishes of the modern sort in England, I may appear to differ from Dr. Lingard, and perhaps (in a less degree) from Selden,[1] the reason is that those eminent men relied for this purpose upon authorities now discredited. Dr. Lingard[2] assumed that the 'Excerptions,' ascribed to Egbert (Archbishop of York in the preceding century), were a genuine work of that prelate; and as in those 'Excerptions' there was contained what I may describe as the 'manse' ordinance of the capitulars made by Louis the Simple at Aix-la-Chapelle in A.D. 816, he drew from this, taken in connection with the later laws of Edgar and Canute, conclusions which might have been reasonable enough, if his premiss had not been erroneous. But nothing is more certain than that those 'Excerptions' were not from the hand of Archbishop Egbert, and that they really belong to a much later time. Selden,[3] when

[1] *Hist. of Tithes*, ch. 9 (ed. 1618), p. 261.

[2] *Antiquities of Anglo-Saxon Church*, vol. i. p. 93, note. His references in that note to '*the many regulations* in Wilkins, pp. 103, 245, 300, 302,' are to portions of Egbert's 'Excerptions' and the laws of Edgar and Canute.

[3] *Ubi supra.*

he wrote that by the beginning of the ninth century, 'lay foundations were grown very common, *and parochial limits also of the parishioners' devotions*,' relied upon a number of lay appropriations of churches to Crowland Abbey, which he found recorded in the chronicle of Ingulph, or of the writer who assumed that name. The true character of that chronicle was not then so well understood as it is now; and this is not the only instance (as will be afterwards seen) in which Selden attributed to it more weight than it deserved. That many charters to Crowland Abbey, earlier than A.D. 800, should have been preserved after the total destruction of that monastery and the slaughter of all its monks in A.D. 869-871, is highly improbable. Ingulph, in the Conqueror's time, carried to London all the charters (real or pretended) of that monastery, and they were read before the king in council. Those (says the chronicler) 'which were written in the Saxon hand, down to the last Mercian king, were treated with contempt'; while those of Edred, Edgar, and the succeeding kings, 'being written wholly or in part in the Gallican hand, were allowed;' the king confirming, by a charter of his own, Edred's grant.[1] Mr. Thorpe[2] says that 'almost all the charters' in Ingulph's work 'are forgeries'; and not only so, but that 'the narrative of Ingulph abounds in gross errors and anachronisms with regard to contemporary events.' Mr. Haddan and Bishop Stubbs say,[3] as to the Acts of two pretended Councils of Benningdon and Kingsbury, recorded by the same chronicler, that they 'are unblushing

[1] Ingulph, pp. 80-82. See Dugdale's *Monastic* (Caley, Ellis, and Bandinel's ed.), vol. ii. pp. 98, 118.

[2] Thorpe's *Literary Introduction* (to his translation of Lappenberg's *History of England under the Anglo-Saxon Kings*, 1845), p. li.

[3] *Councils*, vol. iii. p. 633, note.

forgeries.' No conclusion, even by the most learned men, can be worth more than the premisses on which it is founded; and as to this matter, the premisses both of Dr. Lingard and of Selden were unsound.

### § 6. *Pope Leo the Fourth's Decretals.*

The inferences which I have drawn from the canons of Archbishop Wulfred's council receive confirmation from two rescripts or decretals of Pope Leo IV., the one in the form of a complete epistle[1] addressed 'to the Bishops of Britain' (probably sent by the hand of those messengers from King Ethelwulf who accompanied Prince Alfred on his first visit to Rome), and the other[2] without that address, but said by Walafrid Strabo to have been written for the Anglo-Saxon Church. In the former the Pope spoke of the provision for the offices of religion throughout every diocese as to be made by the bishop, 'by such priests and other clerks as he should provide.' By the latter (following, as he said, the rule laid down by his predecessors) he directed that tithes should be paid to 'baptismal' churches only.

### § 7. *Tithes: Treaty between Edward and Guthrum.*

Passing from the subject of organisation to that of tithes, we obtain no new light till the beginning of the tenth century. The celebrated charters of King Ethelwulf do not (as will hereafter be shown) relate to tithes; and (unless the decretal of Pope Leo IV., just mentioned, be an exception) there is nothing else on the subject in this third period, earlier than A.D. 906. King Alfred was a legislator; but

[1] Migne's *Patrologiæ Cursus*, vol. cxv. p. 667.

[2] *Ibid.*, p. 674: '*De decimis, justo ordine, non tantum nobis, sed majoribus visum est, plebibus tantum, ubi sacrosancta dantur baptismata, dari debere.*'

in his laws there is nothing about tithes. He made a treaty of peace with Guthrum (the first Danish king who professed Christianity and was baptized), by which the government of the eastern parts of England was, on terms then agreed upon, conceded to the Danes. In that treaty[1] there was nothing about tithes. But after the death of both those kings war again broke out between their successors; and that war was terminated by a second treaty of peace, confirmed (more than once) by English witenagemots, under which the same territory was again left in the possession of the Danes. I am disposed, with Mr. Kemble,[2] to distinguish a treaty of that kind (though confirmed by the English national legislature) from a municipal law. It was a compact between the King and State of England and the Danish ruler, as to the government of certain parts of England conceded to him. It did not (in my judgment) impose any reciprocal obligation upon Edward as to the government of his own kingdom, or any new law upon his subjects beyond the Danish territory. Its interest, however, with respect to the present subject is considerable, because one of its stipulations related to tithes and other church dues. 'If any one withhold tithes, let him pay *lah-slit* among the Danes, *wite* among the English'; the same thing, in the same terms, being also provided as to (1) Peter's pence (*Rom-feoh*); (2) 'light-scot'; (3) 'plough-alms'; and (4) any other 'divine dues.' *Lah-slit* and *wite* were the Danish and Saxon mulcts or penalties (the one, according to Selden, equivalent to twenty, and the other to thirty shillings) for ordinary misdemeanours.

Selden,[3] after citing that provision of the treaty as to

[1] Thorpe's *Ancient Laws*, etc., vol. i. p. 153.

[2] *Saxons in England*, vol. ii. p. 476.

[3] *Hist. of Tithes*, ch. 8, § 3 (ed. 1618), p. 203.

tithes, said: 'It may seem by this that some other law preceded, for the payment of tithes, or else that the right of them was otherwise supposed clear.'

On looking into the earlier national legislation, I think it is reasonably certain, that there was no preceding secular law for the payment of tithes. Alfred,[1] in the preface to his own code, said that he had collected everything which he had approved out of the laws of earlier legislators, mentioning by name his ancestor Ina, '*Offa, king of the Mercians*,' and Ethelbert, the first Christian king of Kent. Among the laws of Ina, which he republished, there are two articles[2] relating to 'church-scots,' viz.:

'§ 4. Let Church-scots be rendered at Martinmas. If any one do not perform that, let him forfeit sixty shillings and render the church-scot fourfold.'

'§ 61. Church-scot shall be rendered according to the healm and to the hearth that the man is at in mid-winter.'

There is nothing as to any other kind of church dues, except church-scot,—nothing, therefore, as to tithes, in any of the earlier laws republished by Alfred, or in those under his own name. And that he would not have been likely to disapprove of an earlier law for the payment of tithes, if he had met with it, may be inferred with certainty, not only from his maintaining those laws of Ina as to 'church-scot,' but from the fact that the preface to his code begins with a

[1] Thorpe's *Ancient Laws*, etc., p. 59.

[2] *Ibid.*, pp. 105-141. *Church-scot* was 'originally a certain measure of corn paid to the Church' (note, *ibid.*); mentioning claims to it by the monasteries of Worcester, Pershore, and Glastonbury; and adding that 'the definition given by White Kennett seems best suited to the generality of the Anglo-Saxon term: "It was sometimes a general word, and included not only corn, but poultry or any other provision that was paid in kind to the religious."' It was quite distinct from tithe.

summary of Levitical laws ('the dooms which the Almighty God Himself spake to Moses, and commanded him to keep'); among which is the Levitical commandment as to tithes: 'Thy tithes, and thy first-fruits of moving and growing things, render thou to God.'[1]

I conclude, that there was no secular law before the time of Edward the Elder for the payment of tithes. What, then, is the proper explanation of the article as to tithes and other church dues in the treaty of peace with the second Guthrum?[2]

Any one who examines the whole treaty (which method should be observed by all who wish to avoid risks of error in the interpretation of ancient, or indeed any, documents) must perceive that there is in it only one article —the last[3]—which does not relate to ecclesiastical matters; and also that it enforces religious and ecclesiastical obligations in a manner and to an extent for which there had been, down to that time, no precedent in Anglo-Saxon legislation. The reason (as it seems to me) is this; —that the Danes were, many of them, still heathens, and of those who were nominally converts to Christianity not a few remained, and were likely long to remain, in a state of semi-paganism. They were the same people who not very long before made havoc with churches and monasteries; they had, by their recent insurrection, violated the former treaty; and it is, at least, probable that during that war churches had again suffered. It is easy to understand that under those circumstances strong guarantees for the continuance of Christian usages, and for the customary rights of the clergy and the Church (whether previously

[1] Thorpe's *Ancient Laws*, etc., vol. i. p. 53 (art. 38 of Levitical Laws).

[2] *Ibid.*, pp. 159-177 (see art. 6, p. 171). [3] *Ibid.*, p. 175.

secured to them by law or not), might be thought necessary. In the parts of England under Danish government there would be a mixed population of Anglo-Saxon Christians—the more numerous, but the weaker class—and Danes, the ruling, military, and powerful class, of whom many were pagans, or not much better. It was to be expected, with this state of things in prospect, and with the experience which they had of the past, that the bishops and clergy of (what I may call) the ceded provinces should look to Edward, as lord paramount of all England, for special protection; that his ecclesiastical counsellors should use their influence with him to obtain a treaty of this character; and that he should consider it a duty incumbent upon him to stipulate for the protection which they desired.

It was natural that such stipulations, in such a treaty, for the benefit of the Church in dioceses under Danish government, should before long be followed by corresponding legislation for other parts of the Anglo-Saxon kingdom. The political power of ecclesiastics was on the increase. The observances and church dues in question were customary, and were recognised as of canonical obligation; custom, in certain states of society, passes easily into law; and the line of separation between civil and ecclesiastical legislation was not then clearly drawn.

### § 8. *King Athelstan's Tithe Ordinance.*

A royal injunction for the payment of tithes, although not made or confirmed in the manner necessary to give it the force of a national law, was a step of much importance in that direction. That step was taken by Athelstan, Edward's successor, about A.D. 927,—whether at the time when the Council of Greatanlea was held, or not, seems to me un-

certain. I do not understand, from the text of the first 'Ordinance of King Athelstan,'[1] as printed by Mr. Thorpe, that the Council of Greatanlea is mentioned in the Anglo-Saxon manuscript of that ordinance. It is distinguished, both by a separate title and by internal evidence, from the laws which follow (headed Athelstan's Ordinances),[2] and which are on subjects really secular. The Tithe Ordinance was a royal injunction, addressed to the king's reeves, and to the bishops and ealdormen; it purports to have been made, not with the concurrence of the ecclesiastical and lay 'witan,' but by the king, '*with the counsel of Wulfhelm, archbishop, and of my other bishops.*' It was communicated, as a royal message, to 'the bishops, thegns, counts, and villeins of Kent;' who acknowledged it in a dutiful reply,[3] thanking the king for 'his admonition,' and stating their willingness and desire to comply with it. They called it by its proper name; it was not (as Dean Hook calls it) a 'Canon;' it was a Royal Admonition—conceived under ecclesiastical advice, and in ecclesiastical style.

It is in these terms:[4]

'I, Athelstan, king, with the counsel of Wulthelm, archbishop, and of my other bishops, make known to the reeves at each burgh, and beseech you, in God's name, and by all His saints, and also by my friendship, that ye first of my own goods render the tithes, both of the live stock and of the year's earthly fruits, so as they may most rightly be either meted, or told, or weighed out; and let the bishops then do the like from their own goods; and my ealdormen and my reeves the same. And I will, that the bishops and the reeves command it to all who ought to obey them, that it be done at the right term. Let us bear in mind how Jacob the Patriarch spake: "I will

[1] Thorpe's *Ancient Laws*, etc., vol. i. pp. 195-199.

[2] *Ibid.*, p. 199. (Both these distinct titles are in the Anglo-Saxon manuscript.)

[3] *Ibid.*, p. 216.

[4] *Ibid.*, p. 195.

offer to Thee tithes, and sacrifices of peace;" and how Moses spake in God's law: "Thou shalt not delay to offer thy tithes and first-fruits to the Lord." It is for us to think how awfully it is declared in the books: If we will not render the tithes to God, that He will take from us the nine parts when we least expect; and moreover, we have the sin in addition thereto.

'And I will, also, that my reeves so do, that there be given the church-scots and the soul-scots, at the places to which they rightly belong; and plough-alms yearly, on this condition: that they shall enjoy it at the holy places who are willing to serve their churches, and of God and of me are willing to deserve it; but let him who will not, forfeit the bounty, or again turn to right.

'Now ye hear, saith the king, what I give to God, and what ye ought to fulfil under the penalty of contempt of my authority. And do ye also so, that you may give to me my own, what ye for me may justly acquire. I will not that ye unjustly anywhere acquire aught for me; but I will grant to you your own justly, on this condition that ye yield me mine; and shield both yourselves, and those whom ye ought to exhort, against God's anger, and against the penalty of contempt for my authority.'

This is not, in form, a public legislative act. It is a command, authoritative indeed, but only an exercise of the king's authority over his own reeves, and the bishops and ealdormen, to whom it was addressed; and who, on their part, were to use such an authority over others 'who ought to obey them,' as they possessed by law. The penalties to which it referred, and to which those who neglected to obey it might be liable, were those of contempt against the royal authority—not fine or punishment for non-payment of tithes.

I shall now revert to a subject earlier in date, which it has been convenient to postpone for separate consideration —that of King Ethelwulf's charters; once supposed to have operated as a public grant of tithes to the Church throughout the united Anglo-Saxon kingdom.

Abbey to have been made in the first (? fifth)[1] year of King Ethelwulf's reign is manifestly the same with that abridged by Ingulph, and again abridged by Wendover, except that in the case of each monastery, the particular lands enfranchised (which these chroniclers omitted to mention) would be different. The Malmesbury charter has been printed by Mr. Kemble, and also by Mr. Haddan and Bishop Stubbs, from a Malmesbury cartulary, preserved in the Bodleian Library at Oxford, to which this rubric is prefixed :—'*How King Ethelwulf decimated his land to God and Holy Church, and with what proportion of that tenth he enriched the Church of Malmesbury.*' (*Quomodo Æthelwulfus Rex decimavit terram suam Deo et Sanctæ Ecclesiæ, et quota parte hujus decimæ Meldunensem Ecclesiam ditaverit.*)

As so printed, I now give the substance (and, so far as material, the form) of that document.

It begins with the words (too common, as words of style in public charters, etc., of that period, for anything to turn upon them) 'Our Lord reigning for ever.'[2] It then speaks (in terms which I have elsewhere[3] quoted) of the ravages and depredations of the Danes, and the danger of the times; and it proceeds:

'Wherefore I, Ethelwulf, King of the West Saxons, with the consent of my bishops and princes, have resolved on a salutary counsel and uniform remedy, and have determined to make a gift of a certain portion of land heritably to those of all degrees who are already in possession of it, whether monks or nuns serving God, or lay people, in all cases of the tenth "mansion," or at the least the tenth part, perpetually enfranchised so as to be free and protected from all secular services, royal dues,

[1] The text of Malmesbury is corrupt as to the date; probably the words *anno primo* ought to be *anno quinto*. Ethelwulf came to the throne A.D. 839, and the date of the charter in the Bodleian MS. is A.D. 844.

[2] *Regnante Domino nostro in perpetuum.*' [3] *Ante*, p. 170.

tributes greater and less, or impositions called in our language "*Witereden*," and that it be free from all things for the deliverance of our souls and the forgiveness of our sins, for the service of God only (so that there be not military expedition, bridge-building, or fortification of castles[1]); that so they may the more diligently and without ceasing pour forth their prayers to God for us, because we thus in some degree lighten their secular service.'

After this, it is recited that Ahlstan, Bishop of Sherborne, and Helmstan, Bishop of Winchester (evidently in consideration of the benefit which would result from this Act to the Church), had agreed with their abbots and monastic brethren, that all their 'brethren and sisters' should, in each church, assemble and sing fifty psalms, and every priest celebrate two masses, on every Wednesday, one for King Ethelwulf, and another for his 'dukes' consenting to this gift (*huic dono*) for the ransom and remedy of their faults

[1] '*Quamobrem ego Athelwulfas Rex Occidentalium Saxonum cum consilio episcoporum ac principum meorum, consilium salubre atque uniforme remedium affirmavi, ut* [*? et*] *aliquam portionem terrarum hæreditariam antea possidentibus, gradibus omnibus, sive famulis et famulabus, Dei Deo servientibus, sive laicis, semper decimam mansionem, ubi minimum sit tum decimam partem, in libertatem perpetuam perdonare dijudicavi, ut sit tuta et munita ab omnibus sæcularibus servitutibus, fiscis regalibus, tributis majoribus et minoribus, sive taxationibus quæ nos dicimus Witereden; sitque libera omnium rerum, pro remissione animarum et peccatorum nostrorum, Deo soli ad serviendum, sine expeditione, et pontis instructione, et arcis munitione,*' etc. The word *mansio* is considered by Mr. Kemble equivalent to *hide;* perhaps it might mean a hamlet or homestead with a certain quantity of *folcland* attached to it. See the Latin rendering of Article 37 of Alfred's laws '*Of a bold-getal.*'—'*De mutatione mansionis:—Siquis ab una mansione in aliam transire velit, faciat hoc testimonio aldermanni, in cujus comitatu prius folgavit.*' The word *sine* before the *trinoda necessitas* was understood by Selden to mean a release from those burdens; but it was probably in this place a word of saving. (Thorpe, *Ancient Laws*, etc., vol. i. p. 87; vol. ii. p. 455. Selden, *Hist. of Tithes*, p. 207.)

(*pro mercede et refrigerio delictorum suorum*); prescribing particular psalms for each while living, and also for the continuance of those solemnities after their deaths. Then follows the date:

'This charter (*cartula*) was written, A.D. 844, on the seventh Indiction, on the day of the Nones of November, in the city of Winchester, in the Church of St. Peter, before the High Altar: and this they did for the honour of St. Michael the Archangel, and St. Mary, the glorious Queen, the Mother of God, and at the same time of the Blessed Peter, Prince of the Apostles, and of our Holy Father Pope Gregory, and all the saints; and then, for fuller assurance, King Ethelwolf placed the charter upon the altar of St. Peter, and the Bishops, for God's faith, received it from him: and afterwards they sent it through all the churches in their dioceses, as is aforesaid. *But this land, which we shall enfranchise, belongs to the Church of Malmesbury* (*terra autem ista quam in libertatem ponamus ad Meldunesburgensem ecclesiam pertinet*). *Dæt is at Ellendune thrity hyde, and æt Elmhamstede fyftene hyde, æt Wttune tien hyde, et Cherltune tuentig hyde, et Minty vif hyde, at Rodburne tien hyde.*'

The document ends with a blessing on any who might increase, and a curse on any who might infringe or diminish the grant; of which (being a matter of common style) nothing need be said. And then are appended the signatures of the king, the two bishops Helmstan and Ahlstan, six dukes, three abbots, and sixteen royal officers (*ministri*).

A construction of this document which would make it operate, not as an enfranchisement or authority for the enfranchisement of *folcland*, but as a grant of the tithes of the produce of the lands, is not reasonably possible. Laymen, as well as monasteries and churches, were to be benefited by it; and all those on whom that benefit was to be conferred were already in possession (*antea possidentibus*). The benefit to the Church was probably greater than

to laymen; the Church in return was to sing psalms and offer masses for the donors while living, and for their souls when dead; and in this way the donors hoped on their side to obtain some profit from their munificence. It was evidently an act of enfranchisement, and nothing else.

We do not know how the tenth 'mansion,' or part enfranchised to each participator in this 'privilege' (*Privilegium Æthelulfi Regis*, as the similar grant of A.D. 854 was called in the Abingdon Cartularies),[1] was ascertained. But the earliest annalist who spoke of it (or rather of that of A.D. 854) described all the privileged lands as *inscribed* by Ethelwulf *in a book;* and from that language (consistent with the *grafio sempiterno* of Asser), taken in connection with the *quam in libertatem ponamus* of the Malmesbury document itself, and the statement that the bishops 'sent it through all the churches in their dioceses,'—my inference is, that there was a book or terrier of the lands to be enfranchised as the quota of each church, annexed or appended to the governing charter; and that the bishops sent to each a copy of the charter, with that part only of the annexed book or terrier in which it was directly concerned, in the manner appearing by the two[2] Malmesbury examples. This, however, applies only to such lands as were apportioned to the tenth 'mansion,' or part, contemporaneously with the governing charters. There are examples

[1] Selden, *Hist. of Tithes* (ed. 1618), p. 208.

[2] The Malmesbury abridgment of the later charter of A.D. 854 is, on this point, exactly like the Malmesbury copy of the earlier charter, of which the tenor has been stated. The enumeration of the seven denominations of land, containing together ninety-one 'hides,' with which the abridgment ends, is also introduced by the words: '*Terra autem ista quam in libertate ponamus ad ecclesiam pertinens Maldubesburg est*,' etc. (Will. of Malmesbury, *De Gest. Pontif.*, Gale's ed., pp. 359, 360.)

was the first of the English who gave tithes to God' (*decimas primus Anglorum Deo dedit*).

3. *Langtoft*—[1]

'He was first of England, that gaf God his tithe
Of issue of bestes, of londes, or of tilth.'

4. *Hardyng*—[2]

'He graunted the Church tythes of corne and haye,
Of bestial also, through West-Sex, for aye.'

5. *Holinshed*.[3]—'In the nineteenth year of his reign, King Ethelwulf ordained that the tenths or tithes of all lands, due to be paid to the Church, should be free from all tribute, duties, or services royal.'

### § 3. *Selden's Interpretation.*

Selden[4] acknowledged the difficulty of reconciling the divergent statements of these chroniclers; and also that 'out of the corrupted language of the charter it was hard to collect what the exact meaning was.' But he thought the difficulty might be overcome by understanding 'the granting of the tenth part of the hides or plough-lands' to 'denote the tenth of all profits growing in them'; and he compared such a mode of expression with 'the tenth acre as the plough shall go' (*decima acra sicut aratrum peragrabit*), which, he said, was 'used for tithing of the profits, in the laws of Kings Edgar, Ethelred, and Knout.' And, thinking that construction also supported by the language of those chroniclers who spoke of

[1] Hearne's ed. (Oxford, 1725), p. 19.
[2] Page 193. [3] Book vi., cap. 10.
[4] *Hist. of Tithes*, ch. 8, § 4 (ed. 1618, p. 205).

*decimation* of the lands of the kingdom, he arrived at the conclusion thus expressed:

'If we well consider the words of *the chiefest of these ancients, that is, Ingulphus*, we may conjecture that the purpose of the charter was to make a general grant of tithes, payable freely, and discharged from all kinds of exactions used in that time.'

This reasoning is not satisfactory; and perhaps it might not have appeared so to Selden, if he had esteemed the authority of Ingulph less highly than he did. It is doing no small violence to the natural sense of words to interpret '*inscribing in a book the tenth part of his land and also of his whole kingdom*,'—'*gave the tenth part of his kingdom*,'—'*gave to God and the Church the tenth plough-land of all the land of Wessex*,'—'*released the tenth part of his whole kingdom from royal service*,—as relating to tithes of the produce of land, and not to land itself. Nor is such a construction of such words, without any context to justify it, warranted by the analogy of any phrases used in the laws of Edgar, Ethelred, or Canute. In the laws of Edgar the phrase mentioned by Selden does not occur; his own[1] Latin translation of the only law of Edgar in which the plough is mentioned is—'*Reddatur omnis Decimatio ad Matrem Ecclesiam cui parochia adjacet de terra Thainorum et Villanorum sicut aratrum peragrabit*,' manifestly relating to the *render* of tithes. The phrase does occur in Ethelred's 'Ordinances of Habam,' which we know only from the Latin of Bromton, and which I again take as Selden[2] gives it:—'Let every man . . . give his church-scot and proper tithe (*rectam decimam*), as in the days of our ancestors, when he did it best; that is, as the plough shall go through the tenth acre' (*sicut aratrum peragrabit decimam acram*). It is not

[1] *Hist. of Tithes* (ed. 1618), p. 219. [2] *Ibid.*, pp. 222, 223.

the tenth acre which is the subject of the payment directed; it is the tithe, to be collected *from* every tenth acre. And in Canute's[1] law the same language occurs, in a similar context, if possible still more clear.

As for the word *decimation*, it is not less appropriate to a gift, or to a release from tribute or service, of the tenth part of lands, than to a gift of the tenth part of the produce of lands. Selden himself mentions instances (to which I have elsewhere referred)[2] of decimal gifts, which had nothing to do with tithes. In those cases, and in others, —such as the extraordinary tithe spoken of by Giraldus Cambrensis,[3] the special tithes levied by Boniface VIII.[4] on ecclesiastical persons for the prosecution of his wars in Sicily, and the Crusaders' or 'Saladin' tithe[5] levied in A.D. 1188 under the Le Mans Ordinance of Henry II. in Anjou, and the articles of the Council of Geddington in England,—the decimal measure was suggested, doubtless, by the same principle, derived from patriarchal and Levitical precedents, with tithes paid for the support of the ministry and charities of the Church. But they had nothing, beyond that principle, in common with prædial tithes. And there is nothing more than this in the verb 'decimated,' used by Chroniclers of my second class as to Ethelwulf's charter. Their language is the same with that of those whom I have placed in the first, third, and fourth classes, except that, where the other Chroniclers use a noun, they use the corresponding verb.

If Selden's is a great name, so is that of the earliest

[1] *Hist. of Tithes* (ed. 1618), pp. 223, 224.
[2] *Ibid.*, p. 208 (*ante*, p. 149).
[3] *Ante*, p. 101. [4] *Extrav. Decret.*, lib. iii., tit. vii., cap. 1.
[5] See *Gesta Henrici II.* (Stubbs), vol. ii. p. 31; and *Gervase of Canterbury* (Stubbs), vol. i. p. 409.

writer after him, who touched on the same matter—John Milton. In his *History of Britain before the Conquest*,[1] Milton placed upon the language of the older Chronicles its natural construction. Ethelwulf, he says, 'in hope of divine aid, registered in a book, and dedicated to God, the tenth part of his own lands and of his whole kingdom, eased of all impositions, and consecrated to the maintenance of masses and psalms weekly to be sung for the prosperity of Ethelwulf and his captains; as appears at large by the patent itself in William of Malmesbury.'

## § 4. *The Extant Charters.*

It is obvious that, unless all the Chronicles can be reconciled in the way which Selden thought possible, the choice (so far as the question depends upon, or may be affected by, their traditions), lies between Asser, the Anglo-Saxon Chronicle, and Malmesbury on the one hand, and Ingulph on the other. The later writers may all be regarded as following one or other of these.

But the charters which have come down to us, if genuine, are surer guides than any such tradition. Their genuineness has been doubted;[2] and their text may be (as Selden thought it) more or less corrupted. But I do not think it possible to explain their number, and their form, on any other supposition, than that of the genuineness of some, if not all, of them; nor do I think it necessary to except from that favourable presumption the charter which Ingulph has recorded; which is, evidently,

[1] Milton's Prose Works (Fletcher's ed. 1834), book v., p. 530.

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an abridgment (with some corruption) of the earlier of the two mentioned by Malmesbury.[1]

Since Selden's time much additional light has been thrown on this subject, by the collection and arrangement of many documents bearing upon it. Most of them have been collected and classified in the learned works of Mr. Kemble,[2] and of Mr. Haddan and Bishop Stubbs.[3] Mr. Birch, in his *Cartularium Saxonicum*,[4] mentions twenty-eight in all. Without entering into the question which (if any) of them are spurious, the result confirms Malmesbury's statement, that there were two governing (or, as they might be called in modern phrase, parliamentary) charters, passed by Ethelwulf with the concurrence of witenagemots—the one in the earlier, the other in the latter part of his reign; and they show, by a number of instances, how the benefit of those governing charters was applied to particular lands, in favour of religious houses and of public servants of the realm. To understand their true effect, little more is necessary than attention to the difference, in Anglo-Saxon law, between the two kinds of landed property, called *folcland* and *bocland*.

'*Folcland* was the property of the community. It might be occupied in common, or possessed in severalty. . . . But, while it continued to be *folcland*, it could not be alienated in perpetuity; and therefore, on the expiration of the term for which it had been granted,[5] it reverted to the community, and was again distributed by the same authority. *Folcland* was subject to many burdens and exactions from which *bocland* was

[1] The charter given (in an abridged form) by Wendover, and after him by Matthew of Westminster, is also the same.

[2] *Codex Diplomaticus Ævi Saxonici* (1840), vol. ii.

[3] Haddan and Stubbs, *Councils*, vol. iii. pp. 625-645.

[4] Vol. ii. pp. 5-93 (London 1885).

[5] It was, generally, granted for life only.

exempt. The possessors of *folcland* were bound to assist in the reparation of royal vills and in other public works. They were liable to have travellers and others quartered upon them for subsistence. They were required to give hospitality to kings and great men in their progresses through the country; to furnish them with carriages and relays of horses, and to extend the same assistance to their messengers, followers, and servants, and even to the persons who had charge of their hawks, horses, and hounds. Such, at least, are the burdens from which lands were liberated, when converted by charter into *bocland*.'[1]

The learned author, from whose work this extract is taken, goes on to refute some erroneous notions into which Spelman, Lambarde, Somner, and in more recent times Blackstone, had fallen, when they supposed *folcland* to have been always held by serfs in villenage, or only by the common people. It might be, and it was, 'held by freemen of all ranks and conditions;' by noblemen of the highest rank (of which he mentions an instance in King Alfred's time); it was 'assignable to the thegns, or military servants of the State, as the stipend or reward for their services'; and it was often bestowed on monasteries and the Church.

Those who held *folcland* on these conditions of tenure were, for breach of them, liable to forfeiture, or to penalties called *wite-ræden*,[2] that is, fines or mulcts, exigible in addition to the performance of the principal obligation.

[1] Allen's *Inquiry into the Rise and Growth of the Royal Prerogative in England*, pp. 143-149.

[2] See the use of this word in Ina's laws, §§ 50, 71 (Thorpe's *Ancient Laws and Institutes*, vol. i. pp. 135, 149; and 'Glossary,' *ibid.*, vol. ii., *voce* 'Wite'). In the grant by Ethelwulf to the Thegn Duda (A.D. 840) this term is evidently rendered into Latin by the words *poenalium rerum;* and in the remarkable instance of that king's conversion of *folcland* into *bocland* in his own favour (A.D. 847), with the 'consent and license of his bishops and princes,' it is comprehended in the words *vi exactorum operum sive poenalium causarum*' (Birch, *Cartularium*, vol. ii. pp. 5 and 33).

'*Bocland* (or land held by book or charter) had been severed by an act of government from the *folcland*, and converted into an estate of perpetual inheritance. It might belong to the Church, to the king, or to a subject . . . *Bocland* was released from all services to the public, with the exception of contributing to military expeditions, and to the reparation of castles and bridges. These duties or services were comprised in the phrase, *trinoda necessitas;* which were said to be incumbent on all persons, so that none could be excused from them. The Church, indeed, contrived in some cases to obtain an exemption from them: but in general its lands, like those of others, were subject to them.'[1]

The release of *folcland* from the services, duties, exactions, penalties, and forfeitures thus incident to its tenure,—in other words, its enfranchisement, and conversion into *bocland*,—could not be effected, even in his own favour, by the king,[2] without the authority or consent of the national legislature. It became a frequent practice so to enfranchise particular lands, in favour of particular persons, by charters to which witenagemots consented.[3] By the celebrated 'privilege'[4] of Wihtraed, King of Kent (confirmed by Ethelbald of Mercia in A.D. 742), this had been done in a more general way, as to all the lands of the cathedral churches of Canterbury and Rochester, and eight other monasteries there mentioned. But when Ethelwulf succeeded to the crown, lands not so enfranchised were, to a large extent, in the hands of religious houses, and also of powerful laymen.

[1] Allen's *Inquiry*, etc., pp. 143-151.

[2] See the charter in Ethelwulf's own favour in Birch, *Cartularium*, vol. ii. p. 33.

[3] See Kemble's *Codex Diplomaticus*, vol. i.; charters numbered 138, 140, 141, 142, 161, 162, 163. And Ethelwulf's own grants with assent of the Witenagemot before A.D. 844, in Birch's *Cartularium* (numbered 431, 438, 442), pp. 5, 13, 17, etc.

[4] Haddan and Stubbs, *Councils*, vol. iii. pp. 239, 340, 341.

The copies or abridgments of the first of the two governing charters which are the subject of our present inquiry, found in the pages of Ingulph, of Malmesbury's *Gesta Regum*, of Wendover and of Matthew of Westminster (and also the abridgment of the second, extracted by Selden[1] from the chartularies of Abingdon Abbey), contain no specification of particular lands. But there can be no doubt, that in the originals from which they were taken (and which were preserved as title-deeds in the monasteries to which they belonged) a specification of particular lands in every instance followed; as we learn from Malmesbury himself with respect to his own copy.

His statement on that point is in the *Gesta Pontificum*;[2] where, after mentioning certain quantities of land in seven townships (of which the names are given[3]), as enfranchised (*in libertate posita*) under the charter passed at Wilton on Easter Day A.D. 854, he adds:

'The same king had before, in the first [*? fifth*] year of his reign, made another charter of enfranchisement (*chartam libertatis*) to schools and churches, of which I have here omitted to make mention, because I have set it forth in the *Acts of the Kings*; wherein he had specified these lands belonging to Malmesbury Abbey:—*Elhamstede*, 15; *Wodetune*, 10; *Coolstane*, 20; *Tottanham*, 5; *Minti*, 5; *Reodburnam*, 10.'

(These six denominations of land being different from the seven, enfranchised under the later charter.)

The charter thus stated by the annalist of Malmesbury

[1] *Hist. of Tithes*, ch. 8 (ed. 1618), p. 208.

[2] Gale, *Script. XX.*, pp. 359, 360.

[3] *Piretune*, 35; *Lacot*, 15; *Suttune*, 5; *Corsaburn*, 5; *Cridanville*, 10; *Cemele*, 10; *Domcisie*, 11.

Abbey to have been made in the first (? fifth)[1] year of King Ethelwulf's reign is manifestly the same with that abridged by Ingulph, and again abridged by Wendover, except that in the case of each monastery, the particular lands enfranchised (which these chroniclers omitted to mention) would be different. The Malmesbury charter has been printed by Mr. Kemble, and also by Mr. Haddan and Bishop Stubbs, from a Malmesbury cartulary, preserved in the Bodleian Library at Oxford, to which this rubric is prefixed:—'*How King Ethelwulf decimated his land to God and Holy Church, and with what proportion of that tenth he enriched the Church of Malmesbury.*' (*Quomodo Æthelwulfus Rex decimavit terram suam Deo et Sanctæ Ecclesiæ, et quota parte hujus decimæ Meldunensem Ecclesiam ditaverit.*)

As so printed, I now give the substance (and, so far as material, the form) of that document.

It begins with the words (too common, as words of style in public charters, etc., of that period, for anything to turn upon them) 'Our Lord reigning for ever.'[2] It then speaks (in terms which I have elsewhere[3] quoted) of the ravages and depredations of the Danes, and the danger of the times; and it proceeds:

'Wherefore I, Ethelwulf, King of the West Saxons, with the consent of my bishops and princes, have resolved on a salutary counsel and uniform remedy, and have determined to make a gift of a certain portion of land heritably to those of all degrees who are already in possession of it, whether monks or nuns serving God, or lay people, in all cases of the tenth "mansion," or at the least the tenth part, perpetually enfranchised so as to be free and protected from all secular services, royal dues,

[1] The text of Malmesbury is corrupt as to the date; probably the words *anno primo* ought to be *anno quinto*. Ethelwulf came to the throne A.D. 839, and the date of the charter in the Bodleian MS. is A.D. 844.

[2] *Regnante Domino nostro in perpetuum.*' [3] *Ante*, p. 170.

tributes greater and less, or impositions called in our language "*Witereden*," and that it be free from all things for the deliverance of our souls and the forgiveness of our sins, for the service of God only (so that there be not military expedition, bridge-building, or fortification of castles[1]); that so they may the more diligently and without ceasing pour forth their prayers to God for us, because we thus in some degree lighten their secular service.'

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[1] '*Quamobrem ego Athelwulfas Rex Occidentalium Saxonum cum consilio episcoporum ac principum meorum, consilium salubre atque uniforme remedium affirmavi, ut* [*? et*] *aliquam portionem terrarum hæreditariam antea possidentibus, gradibus omnibus, sive famulis et famulabus; Dei Deo servientibus, sive laicis, semper decimam mansionem, ubi minimum sit tum decimam partem, in libertatem perpetuam perdonare dijudicavi, ut sit tuta et munita ab omnibus sæcularibus servitutibus, fiscis regalibus, tributis majoribus et minoribus, sive taxationibus quæ nos dicimus Witereden; sitque libera omnium rerum, pro remissione animarum et peccatorum nostrorum, Deo soli ad serviendum, sine expeditione, et pontis instructione, et arcis munitione,*' etc. The word *mansio* is considered by Mr. Kemble equivalent to *hide;* perhaps it might mean a hamlet or homestead with a certain quantity of *folcland* attached to it. See the Latin rendering of Article 37 of Alfred's laws 'Of a *bold-getæl.*'—'*De mutatione mansionis:—Siquis ab una mansione in aliam transire velit, faciat hoc testimonio aldermanni, in cujus comitatu prius folgavit.*' The word *sine* before the *trinoda necessitas* was understood by Selden to mean a release from those burdens; but it was probably in this place a word of saving. (Thorpe, *Ancient Laws*, etc., vol. i. p. 87; vol. ii. p. 455. Selden, *Hist. of Tithes*, p. 207.)

(*pro mercede et refrigerio delictorum suorum*); prescribing particular psalms for each while living, and also for the continuance of those solemnities after their deaths. Then follows the date:

'This charter (*cartula*) was written, A.D. 844, on the seventh Indiction, on the day of the Nones of November, in the city of Winchester, in the Church of St. Peter, before the High Altar: and this they did for the honour of St. Michael the Archangel, and St. Mary, the glorious Queen, the Mother of God, and at the same time of the Blessed Peter, Prince of the Apostles, and of our Holy Father Pope Gregory, and all the saints; and then, for fuller assurance, King Ethelwolf placed the charter upon the altar of St. Peter, and the Bishops, for God's faith, received it from him: and afterwards they sent it through all the churches in their dioceses, as is aforesaid. *But this land, which we shall enfranchise, belongs to the Church of Malmesbury* (*terra autem ista quam in libertatem ponamus ad Meldunesburgensem ecclesiam pertinet*). *Dæt is at Ellendune thrity hyde, and æt Elmhamstede fyftene hyde, æt Wttune tien hyde, et Cherltune tuentig hyde, et Minty vif hyde, at Rodburne tien hyde.*'

The document ends with a blessing on any who might increase, and a curse on any who might infringe or diminish the grant; of which (being a matter of common style) nothing need be said. And then are appended the signatures of the king, the two bishops Helmstan and Ahlstan, six dukes, three abbots, and sixteen royal officers (*ministri*).

A construction of this document which would make it operate, not as an enfranchisement or authority for the enfranchisement of *folcland*, but as a grant of the tithes of the produce of the lands, is not reasonably possible. Laymen, as well as monasteries and churches, were to be benefited by it; and all those on whom that benefit was to be conferred were already in possession (*antea possidentibus*). The benefit to the Church was probably greater than

to laymen; the Church in return was to sing psalms and offer masses for the donors while living, and for their souls when dead; and in this way the donors hoped on their side to obtain some profit from their munificence. It was evidently an act of enfranchisement, and nothing else.

We do not know how the tenth 'mansion,' or part enfranchised to each participator in this 'privilege' (*Privilegium Æthelulfi Regis*, as the similar grant of A.D. 854 was called in the Abingdon Cartularies),[1] was ascertained. But the earliest annalist who spoke of it (or rather of that of A.D. 854) described all the privileged lands as *inscribed* by Ethelwulf *in a book;* and from that language (consistent with the *grafio sempiterno* of Asser), taken in connection with the *quam in libertatem ponamus* of the Malmesbury document itself, and the statement that the bishops 'sent it through all the churches in their dioceses,'—my inference is, that there was a book or terrier of the lands to be enfranchised as the quota of each church, annexed or appended to the governing charter; and that the bishops sent to each a copy of the charter, with that part only of the annexed book or terrier in which it was directly concerned, in the manner appearing by the two[2] Malmesbury examples. This, however, applies only to such lands as were apportioned to the tenth 'mansion,' or part, contemporaneously with the governing charters. There are examples

[1] Selden, *Hist. of Tithes* (ed. 1618), p. 208.

[2] The Malmesbury abridgment of the later charter of A.D. 854 is, on this point, exactly like the Malmesbury copy of the earlier charter, of which the tenor has been stated. The enumeration of the seven denominations of land, containing together ninety-one 'hides,' with which the abridgment ends, is also introduced by the words: '*Terra autem ista quam in libertate ponamus ad ecclesiam pertinens Maldubesburg est*,' etc. (Will. of Malmesbury, *De Gest. Pontif.*, Gale's ed., pp. 359, 360.)

extant of later grants of land in Wessex, founded (apparently) on the governing charter of A.D. 844, one to a layman, the king's *apparitor*,[1] dated in A.D. 845; and one to Malmesbury Abbey,[2] of A.D. 850.

Of the second governing charter (the true date of which seems to have been Easter Day A.D. 854, though referred by most of the Chronicles to 855) it will be sufficient to give such an account, as may explain its points of difference from the first, and why it should have been passed at all. The first, as has been seen, was an act of enfranchisement (*antea possidentibus*), to those already in possession; it applied only to lands so possessed. But the second had a larger operation and effect upon all the *folcland* of Ethelwulf's kingdom. Its difference from the first is marked in many ways. It was passed in the king's palace at Wilton, after St. Swithun had become Bishop of Winchester in the place of Helmstan; the introductory part was not the same, there being here no mention of public calamities, but only of the transitory nature of this life. There was no solemn deposit of the document upon the altar of the cathedral church; no transmission of copies by the bishops to all the churches of their dioceses. The psalms and masses promised by the bishops were the same; but, while these were to be sung and said under the first charter on Wednesday, under the second they were to be repeated on Saturday also. Three full contemporaneous copies[3] of it, introducing by way of preamble grants of enfranchisement (*ista est autem libertas quam Æthelwulf Rex in perpetuam libertatem concessit habere*) of particular parcels of land defined by boundaries,

[1] Birch's *Cartularium*, No. 449, vol. ii. p. 30.

[2] *Ibid.*, No. 457, vol. ii. p. 45.

[3] Numbered 1054, 270, and 271 in Mr. Kemble's work. And see Haddan and Stubbs, *Councils*, vol. iii. pp. 638, 640.

—two to thanes, named Hunsige and Wiferth, the third to Malmesbury Abbey,—are printed in Mr. Kemble's *Codex Diplomaticus.*

The material part of that charter of A.D. 844 is thus expressed:

'I have taken and carried into effect, with my bishops, counts, and all my nobles, a salutary counsel, not only to grant a tenth part of the lands throughout my kingdom to the holy churches, but we have also granted to our servants holding office in the same, that they should hold it enfranchised for ever; so that this donation shall remain fixed and unchangeable, discharged from all royal service, or other secular services.'[1] [Then follows the agreement of Bishops Ahlstan and Swithun, about weekly psalms and masses.]

Of this charter, the royal officers or servants appear to have been especially favoured objects. If it had been otherwise, it would still have been impossible to understand *decimam partem terrarum* of prædial tithes. In later charters, made by virtue of this, and in which the authority given by it is referred to (of which there are several,—two to Winchester Cathedral,[2] and one to a king's officer named Dunne[3]), the subject of the grants was unequivocally land, not tithes.

All the best historical critics of the present century, who have paid any attention to these charters of Ethelwulf, are agreed in conclusions not differing in substance from my own

[1] '*Consilium salubre cum episcopis, comitibus, et cunctis optimatibus meis perfeci, ut decimam partem terrarum per regnum nostrum, non solum sanctis ecclesiis darem, veram etiam et ministris nostris in eodem constitutis in perpetuam libertatem habere concessimus; ita ut talis donatio fixa incommutabilisque permaneat, ab omni regali servitio et omnium sæcularium absoluta servitute.*'

[2] See Haddan and Stubbs, *Councils*, vol. iii. pp. 641-643.

[3] *Ibid.*, pp. 644, 645.

—Dr. Lingard,[1] Mr. Sharon Turner,[2] Mr. Kemble,[3] the late Mr. Haddan and Bishop Stubbs.[4] The policy of those charters was, perhaps, not so purely ecclesiastical as might at first sight appear. The times were such as to make the subtraction of large quantities of *folcland* from the distributable public estate, out of which soldiers and civil servants might be rewarded, inconvenient. Bishop Ahlstan was a statesman and a soldier, as well as a churchman. Swithun was also a trusted minister of the king. The enfranchisement of a certain proportion of the folkland in ecclesiastical hands might make the resumption of other parts for State uses more easy; and it might check the frequency of applications to the king and Witenagemot, in particular cases, for privileged grants of such land. Nor is it to be assumed, that because, by the second charter, the king took power to grant in *bocland* as much as a tenth part of the folkland of the whole kingdom of Wessex, that power was fully exercised. The charter was potential, not imperative; it may have had (like the first) a 'book' or terrier of grants already determined upon appended to it: but the extant subordinate charters prove that these did not exhaust the power.

[1] *Antiquities of the Anglo-Saxon Church* (1806), vol. i. p. 126; and note (A) at p. 303.

[2] *History of Anglo-Saxons* (5th ed. 1828), vol. i. p. 493.

[3] *Saxons in England* (1876), vol. ii. pp. 480-485.

[4] *Councils*, vol. iii. pp. 637, 638, 642, note.

# CHAPTER VI

## FOURTH PERIOD—THE PRIMACIES OF ODO AND DUNSTAN

### § 1. *New Relations between England and the Continent*

IT has been seen that in Alfred's time learning was so utterly lost in England, that, with a few exceptions (such as Archbishop Plegmund, Asser, Grimbald, and his own chaplain John),[1] hardly any priest could be found who knew Latin; and those who desired instruction had to go abroad for it. The monastic libraries had been destroyed; it was on the Continent, and not here, that ecclesiastical literature, even of Anglo-Saxon origin, was still known and preserved.

Alfred's son, Edward, was an unlearned man; but he advanced the cause of learning through the alliances by which he sought to strengthen himself in his kingdom. Four of his daughters married French or German kings and princes.[2] The way was thus opened for more frequent intercourse between this country and the Continent. Athel-

[1] Gervase of Canterbury (Stubbs' ed. 1879; vol. ii. pp. 44, 45) adds to the exceptions enumerated by Alfred the name of Wenefrid, 'Bishop of the Wiccians.' '*Ecclesiæ*' (he says) '*cum bibliothecis suis a Danis combustæ fuerunt, et propterea in tota insula studium litterarum abolitum est, quod quisque magis vereretur capitis periculum, quam sequeretur librorum exercitium.*'

[2] See Lappenberg, *Hist.* (Thorpe's transl.), vol. ii. pp. 99, 107, 109, 110.

stan, Edward's son, sent presents to foreign monasteries;[1] and in foreign monasteries, from the latter days of Alfred, many English youths destined for the service of the Church received their education.

### § 2. *Archbishop Odo.*

Among these was Odo (or Oda), by birth a noble Dane,[2] who, in the year after the accession of Edmund, Athelstan's half-brother, to the throne, became Archbishop of Canterbury. He had taken the monastic habit[3] in the Benedictine monastery of Fleury, near Orleans. He governed the Church of England for seventeen years, with a constant view to its revival or reformation upon monastic principles. It was under his primacy that Dunstan, and his colleagues Ethelwold and Oswald, rose to power; and if the fame and the honours of canonisation with which the Benedictine party rewarded their successful champions fell to the lot of the disciples rather than the master, the policy which triumphed was that of Odo.[4]

### § 3. *The Reforming Triumvirate.*

Of the men who completed the revolution for which Odo had been preparing the way, Bishop Stubbs[5] says, that 'Ethelwold was the moving spirit; Oswald tempered zeal with discretion; Dunstan may be credited with such little moderation and practical wisdom as can be traced.' From that estimate of their characters I see no reason to

[1] See Lappenberg, *Hist.* (Thorpe's transl.), vol. ii. p. 111.

[2] Hook, *Lives of Archbishops*, vol. i. p. 361.

[3] See Eadmer's Life of St. Oswald (Wharton's *Anglia Sacra*, vol. ii. p. 194).

[4] Stubbs, *Memorials of Dunstan*, Introd., p. xxxvii. See *ante*, p. 154, and Appendix B.

[5] *Memorials of Dunstan*, Introd., p. xcviii.

differ. Dunstan was the eldest, Oswald the youngest of the three; all rose to positions of influence early in life. Dunstan had the largest mind, and the most statesmanlike qualities; Oswald had seen most, and Ethelwold least, of the Church and the world beyond England. But they were men of one purpose, and of equal resolution and courage. It is important, with reference to some questions which remain to be examined, that the influence of foreigners, and of foreign Church literature, upon them, and upon the Anglo-Saxon Church in their time, should be understood.

## § 4. *Oswald, Bishop of Worcester, and his Foreign Associates.*

I will speak of Oswald first, Archbishop Odo's nephew, who when young became a monk at Fleury,[1] as his uncle had been before him; passing there through minor orders and the diaconate to the rank of priest. He returned to England, and in King Edred's time went abroad again, with a company whose destination was Rome; but he turned aside to Fleury, upon some mission (as is supposed) from his ecclesiastical superiors.[2] When Dunstan became archbishop in A.D. 960, he was made Bishop of Worcester, and in 972 Archbishop of York. He was very active in the expulsion of the married clergy from the greater monasteries of Mercia, and in bringing those houses under the Benedictine rule. Bishop Stubbs[3] says that 'while the monastic movement had taken its rise at Winchester, it was received with most favour in Mercia.' He brought over from France[4] several learned men to instruct the inmates

[1] Eadmer's Life of Oswald (Wharton's *Anglia Sacra*, vol. ii. p. 194). At Fleury he is said to have been a disciple of Abbo.

[2] *Ibid.*, p. 195. [3] *Memorials of Dunstan*, Introd., p. xcvii.

[4] Eadmer's Life (*ubi supra*), pp. 200, 201.

of some of those monasteries in the Benedictine discipline, and in grammar and the liberal arts. Among these was Abbo[1] of Fleury, a man afterwards famous, who, after passing some time at Paris and at Rheims,[2] had returned to his native diocese of Orleans. Oswald, in A.D. 985, made him chief instructor to the monks of Ramsey Abbey, and ordained him priest. Abbo, while in England (perhaps before), was intimate with Dunstan,[3] and composed, at Dunstan's request, and from materials furnished by him, a Life of St. Edmund of East Anglia. On his return to France, he became abbot of his own monastery of Fleury; and in that character attended the council held at St. Denis towards the end of the century, and entered into a controversy about monastic tithes, which I have elsewhere mentioned, with his own diocesan, Arnulph of Orleans, and other French bishops.[4] He lost his life in some affray arising out of the enforcement of monastic discipline, in A.D. 1014; and was reckoned among martyrs and saints by the Gallican Church.[5]

Oswald also sent to the Continent, at his own expense, a monk of Worcester, of his own name, who returned after visiting most of the great monasteries of France and the

[1] Eadmer's Life (*ubi supra*), p. 201.

[2] See Moreri, *Dictionnaire, in nom.* 'Abbon, de Fleuri.'

[3] Stubbs, *Memorials of Dunstan*, Introd., p. xix.; and see Life of Oswald (Wharton's *Anglia Sacra*, vol. ii. pp. 201, 202). Moreri says, 'His merit was recognised and honoured by King Ethelred, and the great men of the kingdom of England.'

[4] *Ante*, pp. 65, 66; and see his *Apologeticus*, etc., in the Appendix to Pithou's *Codex Canonum Vetus Ecclesiæ Romanæ* (Paris 1687); in Mabillon's *Vetera Analecta;* and Gallandii, *Bibl. Veterum Patrum* (Venice 1781), vol. xiv. p. 141 *et seq.*; also Baronius, *Annales*, vol. xvi. p. 434.

[5] Moreri, *ubi supra;* and see Wharton's *Anglia Sacra*, vol. ii. pp. 201, 202.

Low Countries, among others Corbey and Fleury. He died in A.D. 1010.[1]

### § 5. *Ethelwold, Bishop of Winchester.*

Ethelwold[2] was a Benedictine monk of Glastonbury, when Dunstan was abbot there. In King Edred's time he wished to cross the sea with a view to self-improvement; but his presence in England was thought of sufficient importance for leave to be refused him by the king. Soon afterwards he was made Abbot of Abingdon, described by its chronicler[3] as then a small monastery, much impoverished, and the only house in England (except Glastonbury) under the Benedictine rule. There he gathered round him, from all parts of England, men accustomed to different usages of reading and chanting; and, to bring them all to one uniform method, he prevailed on some of the monks of Corbey to come over from France[4] and teach them. He also sent Osgar,[5] who had followed him from Glastonbury, and who succeeded him in the abbacy when he

[1] Pitseus (Paris, 1619), *Ætas undecima;* p. 181 : '*In Galliam Belgicam navigavit; et in transmarinis partibus pleraque celebriora monasteria studiorum causa visitavit, liberalitate Oswaldi Episcopi Vigorniensis in tota illa peregrinatione sustentatus. Invisit autem, inter cætera, monasteria S. Bertini, S. Vedasti, et Corbeiam; deinde S. Dionysii cœnobium non longe a Parisiensi civitate situm, et Latiniacum Fursæi Collegium;—tandem Floriacense monasterium.*'

[2] See his Life, by Wulfstan (Migne's *Patrolog.*, vol. cxxxvii. p. 82, etc.); *Hist. Cœnob. Abendon.* (Wharton's *Anglia Sacra*, vol. i. pp. 163, 164).

[3] *Hist. Cœnob. Abendon.* (Wharton's *Anglia Sacra*, vol. i. pp. 163, 164).

[4] *Ibid.*; and see the Abingdon memoir, *De sancta Athelwoldo*, in Dugdale's *Monastic.* (Caley, Ellis, and Bandinel), vol. i. p. 516.

[5] *Ibid.*; and Wharton's *Anglia Sacra* (*ubi supra*); also Migne's *Patrolog.*, vol. cxxxvii. pp. 82-92 (cap. 14 of Wulstan's *Vita*, etc.)

was advanced to the bishopric of Winchester in A.D. 863, to Fleury for further instruction. Among the pupils of Ethelwold was Aelfric, the 'grammarian,' of whom more will hereafter be said.

### § 6. *Dunstan, Archbishop of Canterbury.*

Dunstan[1] began life as a courtier in King Athelstan's reign, but retired from court in disappointment or disgust. King Edmund (A.D. 942) made him Abbot of Glastonbury. He was the chief minister of Edmund's brother and successor, Edred. He affronted and incurred the enmity of Edwy, the most unfortunate of Anglo-Saxon kings, and in consequence fled to Flanders. There he remained for a year, a guest in the monastery of St. Peter at Ghent,[2] then in the highest repute among the religious houses of the Low Countries for good discipline and learning. The revolution of the succeeding year, A.D. 957, brought him home again; and Edgar made him, by quick steps, Bishop of Worcester and of London, and (in A.D. 960) Archbishop of Canterbury. After this elevation he was for twenty-eight years chief governor of the kingdom. To his policy, ecclesiastical and civil, it was due that Edgar 'the Peaceful' became celebrated by the monastic historians, as among the greatest and most fortunate of kings; as the compeer in glory of Romulus and Cyrus, of Alexander and Arsaces, of Charlemagne and Arthur.[3]

[1] See his Life, by Osbern, in Stubbs' *Memorials*, and in Migne's *Patrolog.*, vol. cxxxvii. p. 410 *et seq.*

[2] *Ibid.*, cap. 27 (Migne, *ubi supra*, p. 437); Stubbs' *Memorials*, Introd., p. lxxxix.

[3] '*Incomparabilis*,' he is called by Ralph Higden; Hoveden compares him to *all* the kings above named; Symeon of Durham and the Melrose Chronicle to all but Arsaces.

## § 7. *The Council of Winchester—'Regularis Concordia.'*

It is to the year A.D. 969 that Symeon of Durham[1] refers the commission given by King Edgar to Dunstan, Ethelwold, and Oswald, to eject the married clergy or secular canons from the greater monasteries of Mercia, and to put monks in their places. Others[2] assign a different date to that mandate. Abbot Ailred of Rievaulx[3] (writing in King John's time) put a long and highly rhetorical speech into King Edgar's mouth, as delivered to the three bishops upon that occasion. I extract from it a sentence:

'Thou didst say, O Dunstan, that almsgiving endures for ever; and that none is more fruitful than that which is bestowed upon monasteries and churches, wherewith God's servants may be sustained, and all that is not wanted for that purpose laid out upon the poor (*quo Dei servi sustententur, et quod superest pauperibus erogetur*).'

Whatever may be thought of this, there can be no doubt that a council was held at Winchester, under King Edgar's authority, at which a rule for all the Benedictine monasteries in England was drawn up and agreed to, in twelve articles.[4] It is commonly ascribed to Dunstan; and is entitled 'The *Regular Concord* (*Regularis Concordia*) of the monks and nuns of the English nation.' The narrative with which it is introduced recites the destruction of many

[1] *Gesta Regum Angl.* (Savile's *Hist. Angl. Script. X.*, p. 158).

[2] The charter for expelling the married clergy from Worcester (printed by Mansi, *Concil.*, vol. xviii. p. 479) is dated in A.D. 964.

[3] Savile, *Hist. Angl. Script. X.*, p. 360. (Also in Mansi, *Concil.*, vol. xviii. p. 527); and, translated into English, in Stow's *Annals*; (Howes' ed. 1632, p. 84, A.D. 963).

[4] Reyner, *Apostolatus Benedictinorum in Anglia* (1626), append., pars iii. pp. 77-92 (and see Migne's *Patrolog.*, vol. cxxxvii. pp. 476-490).

of the English monasteries, and the deficiency of the means for keeping up Divine service in others; and that the king, having restored them,[1] had called the council together to agree upon this uniform rule. It then proceeds:

'Thereupon, cheerfully and with all the energy of their minds obeying this royal command, and remembering how our holy patron, St. Gregory, admonished the blessed Augustin to appoint for the ornament of the then rude English Church any good usages, not of the Roman Church only, but of the Gallican Churches also: They [the bishops, abbots, and abbesses], *having called to their aid monks from the Benedictine house of Fleury, and also from the chief monastery of the famous city named Ghent*, and collecting what is excellent out of their good customs, as bees store their honeycomb in one hive, from the different flowers of the fields,—have put into this small scroll (*hoc exiguo apposuerunt codicillo*) those manners and customs adapted to good living and to the sweetness of the regular discipline; that, by means thereof, those who walk in the royal road of the Lord's commandments may be refreshed as with a welcome draught, and filled with most sweet devotion.'

The twelve articles (*capitula*) of the *Concordia* were preceded by a decree as to the election of bishops (as well as abbots and abbesses), intended to place the monastic system upon a footing of absolute security. The royal consent was required to every election; and no one was to be eligible to any bishopric except a regular monk of the Benedictine order, who, when consecrated bishop, was to be the head of his conventual chapter, and 'to observe in all things the same rule with his monks, like a regular abbot.'

Of the articles constituting the rule, nine are occupied with the order of the church services, at all the different

[1] More than forty monasteries are said to have been restored by King Edgar.

hours, times, and seasons; one with a regulation as to weekly cleansing; another with the sickness of any brother, and his burial after death. The tenth article[1] regulated the distribution of the alms of the monastery; and it deserves the more attention, because of the sentiment put into Dunstan's mouth in the speech ascribed to King Edgar, and the statements of his biographers as to his great care, during his primacy, 'for the due application of the revenues of the Church to the relief of widows, orphans, and strangers':

'Let there be in every monastery places set apart for the entertainment of the poor (*singula loca, ad hoc constituta, ubi pauperum fiat susceptio*): and *on each day* let *three* of the poor who are constantly fed in the monastery be chosen, to have the benefit of this mandate, and to be fed with the same victuals which the brethren use. And attendance is to be given there in this course. On Saturday, the boys of the right side of the choir are to do it, with one of the choir-masters; on the Lord's day following, the other boys of the left side, with the other choir-master: and for every other day in the week, so many brethren are to be told off, from holyday to holyday, for this service, that no one of them except the abbot shall be excused from that duty: and he is to do it when he can.

'For the rest, when poor strangers arrive (*supervenientibus peregrinis pauperibus*), the abbot, with brethren chosen by him according to the precepts of the rule, is to see that they have the benefit of this mandate; and so the Father himself (if by any means he can), or one of the brethren, must zealously perform towards them in the hospice all the offices of humanity, and no attention to them which the rule requires is to be omitted through any temptation of pride or error of forgetfulness. . . . And when the strangers go forth, let a supply of victuals be given them, as the means of the place may allow.'

This rule of the *Concordia* affords, in my judgment, strong, though indirect, evidence against the idea, that in

[1] Reyner, p. 92; Migne (*ubi supra*), p. 490.

the English Benedictine monasteries of Dunstan's time any custom of tripartite, or quadripartite, or other definite division of tithes, or of any other part of their revenues, was known. It agrees well with the primitive practice recommended by Gregory the Great to Augustin; and it was adopted (as has been seen) by a council which had directly in view Gregory's answer given at the same time to Augustin upon another point, and which was assisted by foreigners conversant with the customs of the Gallican churches.

### § 8. *Canons enacted under King Edgar.*

Not only was the *Concordia* silent as to any proportionate rule of distribution, but the like silence was preserved in the canons[1] made under King Edgar during Dunstan's primacy, one of which (the fifty-fourth[2]) enjoined all priests to remind the people to pay tithes and other church dues at the usual times and seasons (mentioning them); and another (the fifty-fifth[3]) enjoined 'that the priests so distribute the people's alms that they do both give pleasure to God and accustom the people to alms.'

The implication from the generality and indefiniteness of these provisions, in the *Concordia* and in the canon, is the more forcible when they are contrasted with a later document[4] containing a scheme of rules for a college of secular clergy, into which the article of the *Capitulare*

[1] Thorpe's *Ancient Laws*, etc., vol. ii. p. 245 *et seq.*

[2] *Ibid.*, p. 257. The *Law of the Northumbrian Priests* (*ibid.*, p. 301, art. 60), imposed pecuniary mulcts for non-payment of tithes; on a 'king's thane,' ten half marks; on a landowner, six; on a *ceorl*, twelve sous.

[3] Thorpe's *Ancient Laws*, etc., vol. ii. p. 257. [4] *Post*, p. 263-268.

*Episcoporum* as to a tripartite division of tithes, was introduced; and with a gloss[1] upon the canon itself, demonstrably belonging to the latter years of King Ethelred. Those documents will be described in a later chapter. There are parts[2] of Dunstan's canons from which it may reasonably be inferred, that he was not unacquainted with the *Capitulare Episcoporum*. It must certainly have been known to some of the foreigners consulted at the Council of Winchester, or who were brought into England by Oswald and Ethelwold; and it may (not improbably) have come to Dunstan's own knowledge when he was at Ghent. There were certainly afterwards (if not then) some who would willingly have seen it followed in England. But probability is much against the supposition that Dunstan or his colleagues were among that number. The foreign monastery whose principles and practice, of all others, had most weight with them, was Fleury; and nothing can be more certain, than that at Fleury the *Capitulare Episcoporum* (if known at all) was not accepted as law or acted upon in practice, and that it was not there regarded as of authority. Abbo knew nothing of it; he objected[3] to a different form of tripartite division, in which the bishop took a third share. He thought that, as to the church revenues under the bishop's administration, the quadripartite rule (received at Paris and Rheims) ought to be followed at Orleans; and that as to those revenues, whether tithes or anything else, which were in the possession of monasteries, they ought to be disposed of according

[1] *Post*, p. 262.

[2] *E.g.*, Canons 26, 45, 54, 65, 66, 67 (Thorpe's *Ancient Laws*, etc., vol. ii. pp. 251, 253, 257, 259).

[3] See his letter to the monk Gerald, in Bouquet, *Recueil des Histoires*, vol. x. p. 440, §§ 2, 3.

to the rules of the house, without episcopal interference.[1] In his controversy with Bishop Arnulph he put forward in aid of his arguments a collection of canons,[2] in which the rule of the *Capitulare Episcoporum* found no place; but, on the contrary, several of the canons of the first Council of Orleans, and of the Councils of Braga and Toledo, were relied on, together with passages from decretal letters of Popes Gregory the Great and Simplicius laying down the Roman or quadripartite rule.

### § 9. *King Edmund's Laws.*

The secular legislation on ecclesiastical subjects during the primacies of Archbishops Odo and Dunstan (doubtless passed under their influence) consists of the laws of Kings Edmund and Edgar.

Those of Edmund[3] are three in number, and short, but not unimportant.

The first (on which it is not material to dwell) imposed a penalty on persons 'in holy orders' (an expression which there appears to include nuns) if guilty of incontinence.

The second made the non-payment of tithes and other church dues punishable by excommunication: 'A tithe we enjoin to every Christian man by his Christendom, and church-scot, and *Rom-feoh* (Peter-pence), and plough-alms. And if any will not do so, let him be excommunicated.' This, proceeding upon the ground of recognised religious obligation, was a step in advance, beyond anything previously contained in Anglo-Saxon secular laws.

[1] App. to Pithou's *Codex Canonum Vetus*, etc. (Paris 1687), pp. 417, 418.

[2] Gallandii *Bibl. Veterum Patrum* (Venice 1781), vol. xiv. pp. 160, 169. See Canons 27, 30, 31, 35, 38.

[3] Thorpe's *Ancient Laws*, etc., vol. i. pp. 245-247.

The third related to the repair of churches:

'We have also ordained that every bishop repair the houses of God in his own district, and also remind the king that all God's churches be well conditioned, as is very needful for us.'

This relates to the repair, out of the funds at the bishop's disposal, of the public baptismal churches of the diocese; and it seems to indicate, that no part of these funds was then separated by any customary mode of division from the rest, and appropriated for the repair of churches.

### § 10. *King Edgar's Laws.*

The ecclesiastical ordinance, made by King Edgar and his witenagemot at Andover,[1] was the first step taken in England, so far as law is concerned, towards the transition from the old baptismal churches and their districts to modern parish churches and parishes. Selden[2] (who seems to have considered the canon passed under Archbishop Wulfred, as to the proceedings to be taken upon a bishop's death, capable of a construction,[3] which I have elsewhere given my reasons for rejecting) rightly observed that

'The first express mention of limitation of profits (other than of the endowing), to be given to this or that church, is in those laws of King Edgar, made about A.D. 970, where a threefold division is of churches. The first is called *ealdan mynstre*, that is *senior ecclesia*, which name anciently was given to cathedral churches; the second, a church that hath *legerstowe*, or place for burial; the third, a church that hath no *leger stowe*.'

Blackstone,[4] rejecting the tradition about Honorius, and also (if he knew it) that about Theodore, referred the

[1] Thorpe's *Ancient Laws*, vol. i. pp. 263-265 (see p. 273 as to Andover). [2] *Hist. of Tithes* (ed. 1618), ch. 9, § 4, p. 262.
[3] *Ibid.*, pp. 261, 262. [4] *Comment.*, vol. i. p. 113.

origin, or at least the earliest public recognition, of parishes of the modern sort, to these laws of Edgar.

Their first article[1] recognised the general right of the old 'baptismal' churches to tithes:

'That God's churches be entitled to every right; and that every tithe be rendered to the old minster, to which the district belongs; and be so paid, both from a thane's *in-land* (*i.e.* land in the lord's own hands), and from *geneat-land* (*i.e.* land granted out for services), so as the plough traverses it.'

The second article[2] introduced a qualified exception, in favour of manorial churches with burial-grounds:

'But if there be any there who on his *bocland* (*i.e.* his private estate) has a church at which there is a burial-place, let him give the third part of his own tithe to his church. If any one have a church at which there is not a burial-place, then, of the nine parts, let him give to his priest what he will; and let every church-scot go to the old minster, according to every free hearth; and let plough-alms be paid when it shall be fifteen days over Easter.'

The third article[3] fixed the times for payment of each description of tithes, and also of 'church-scot,' on peril of the legal 'wite' (a pecuniary penalty); and it provided, for the first time, a further remedy and penalty, in case of non-payment:

'And if any one will not then pay the tithe, as we have ordained, let the king's reeve go thereto, and the bishop's, and the mass-priest of the minster, and take by force a tenth part for the minster to which it is due; and assign to him the ninth part, and let the eight parts be divided into two; and let the landlord take possession of one half, and the bishop the other half; whether it be a king's man, or a thane's.'

[1] Thorpe's *Ancient Laws*, etc., vol. i. p. 263.
[2] *Ibid.* [3] *Ibid.*, pp. 263-268.

The next article related to Peter-pence; the fifth, and last,[1] to the proper observance of the Lord's Day, and of other festivals and fasts; directing '*soul-scot*' (a burial fee) to be 'paid for every Christian man to the minster to which it is due'; and 'church-grith' (*i.e.* the privileges of churches) to be maintained.

There was no other law of King Edgar, bearing either on tithes or on church organisation. But there was a 'supplement'[2] to his laws, in the nature partly of a royal proclamation, and partly of an archiepiscopal charge. It seems to have been issued on occasion of a pestilence; and it commanded various things, which were regarded as within the proper scope of the executive power. It contained[3] this mandate:

'I and the archbishop command, that people shall not anger God, nor merit either the sudden death of this present life, nor, still more, the future one of eternal hell, by any diminution of God's dues: but that both rich and poor, who have any tilth, render to God His tithes with all joyfulness and without any grudge, as the ordinance teaches, that my *witan* ordained at Andover.'

The king's reeves were then commanded to execute that ordinance strictly; and there is this reference[4] to priests serving in royal or manorial churches or chapels:

'Then will I, that these, God's dues, stand everywhere alike in my dominion; and that the servants of God, who receive the moneys which we give to God, live a pure life: that, through their purity, they may intercede for us with God; *and that I and my thanes direct our priests to that which the pastors of our souls teach us, that is, the bishops*, whom we ought never to disobey in any of those things which they teach us on the part of God!'

[1] Thorpe's *Ancient Laws*, etc., vol. i. p. 265.
[2] *Ibid.*, p. 271 *et seq.* [3] *Ibid.*, pp. 271-273. [4] *Ibid.*, p. 273.

This legislation, with the illustration which it receives from the 'supplement,' presents several points for inquiry and remark.

What were the 'old minsters,' to which, subject to the exception made by the second article, tithes were generally to be paid? I think the probable answer to that question is, that the word 'minster' had not then departed from its original sense of a conventual or collegiate church;[1] and that those 'old minsters' were 'baptismal' churches; cathedrals, or churches of secular canons or monks. Selden[2] interpreted the words in the first article, which Mr. Thorpe translates '*the old minster to which the district belongs*,' as equivalent to '*the ancientest church or monastery where he hears God's service*.'

He observed, that the monasteries, both when filled with secular clerks before Edgar's time, and (after the change then made) by Benedictines, 'were in many places the only oratories and auditories that the near inhabitants did their devotions in,' and that they had special privileges in respect of burial. The earliest place in any later laws, in which I find the word '*minster*' clearly extended to churches of King Edgar's second class, viz. manorial churches with cemeteries, is the third article of Canute's ecclesiastical ordinances;[3] where there is a graduated scale of penalties

[1] See *Institutes of Polity;* (Thorpe's *Ancient Laws*, vol. ii. pp. 321, 323, 325), as to abbots, abbesses, and monks, '*within their minsters*;' and priests and nuns, '*dwelling in a minster*.' Those 'Institutes' were later than Edgar's time (*ibid.* p. 321).

[2] *Hist. of Tithes* (ed. 1618), ch. 9, § 4, p. 263.

[3] Thorpe's *Ancient Laws*, etc., vol. i. p. 361. This article is also contained in the preliminary scheme, entitled *Of Church-Grith*, commonly reckoned among the laws of Ethelred (but as to which see *post*, pp. 276-287), on which most of Canute's ecclesiastical laws were founded. (Thorpe, *ubi supra*, pp. 341, 343, art. 5.)

for violation of the privileges of churches;—so much for a '*chief minster*'; so much less for '*a minster of the middle class*'; less still for '*one yet less, where there is little service, provided there be a burial-place*'; and least of all, for '*a field church, where there is no burial-place.*' Here I understand the 'chief minster' to be the cathedral of the diocese; a 'minister of the middle class' to be a conventual or collegiate baptismal church, of less dignity than the cathedral; '*one yet less*' to be a manorial church, entitled to one-third of the local tithes under Edgar's law; and a 'field-church' to be a private oratory or chapel, not so entitled.

The next question which suggests itself is, as to the condition and rights of those manorial churches (with burial-grounds), and of their priests? They certainly did not immediately after the passing of Edgar's laws become fully developed parish churches, or their priests parish priests. Their parishes (a word which came gradually to be applied to them) appear to have been for a long time called '*shrift-districts*';[1] explained by Selden to mean 'circuits within which the priests exercised their shriving.' In the supplement to Edgar's laws[2] it seems also to be implied, that they had not what we now call a freehold tenure of their offices; but that the lords, within whose *bocland* their churches stood, had more control over them, and the bishops (without the lords' assistance) less, than under the modern parochial system. With respect to emoluments, their position seems to have been not unlike that of modern

[1] Selden, *Hist. of Tithes*, ch. 9, § 2 (ed. 1618), p. 252. See laws of Ethelred of A.D. 1008, Act 12 (Thorpe's *Ancient Laws*, etc., vol. i. p. 309); *Laws of Northumbrian Priests*, Act 42 (*ibid.*, vol. ii. p. 297); *Institutes of Polity*, Arts. 7 and 19 (*ibid.*, pp. 315, 327), etc.

[2] Thorpe's *Ancient Laws*, etc., vol. i. p. 273.

vicars; the old minster standing towards them in a relation similar to that of those monasteries of later times, to which appropriations of churches or tithes were made; and the one-third of local tithes which they received being like the reasonable stipend (*congrua portio*[1] of the modern canon law) moderated or assigned by the bishop, which the ecclesiastical appropriator (or, on the Continent, the lay owner[2] of feudalised tithes) had to pay the curate or vicar. The one-third, under Edgar's ordinance, was a *congrua portio*, fixed by law for all those consecrated churches on private estates to which cemeteries were attached.

Selden[3] thought, that when in this way the formation of rural parishes had once begun, there would be a natural tendency to the subdivision of such parishes, through the erection of new churches, with cemeteries attached to them, by the owners of *bocland* within their limits; and that, when these 'afterwards became whole parishes, they, by connivance of the time, took (for so much as was in the territory of that *bocland*) the former parochial right that the elder and mother church was possessed of.' That process, however, would rarely take place, unless the title to a tract of *bocland*, originally belonging to one person, had become by some means divided; for it cannot be doubtful that the original 'shrift-district' of every church of King Edgar's second class consisted of adjoining property of the lord on whose land the church stood. And no such process is sufficient to account for the subsequent enlargement of the one-third part of the local tithes of any such 'shrift-district' (or parish), conceded by Edgar's law, into the whole, excluding the 'older minster.' The explanation of such a change as this must be sought in

[1] See Jouy, *Principes et usages*, etc., cap. xi; pp. 344-422.
[2] *Ibid.*, p. 352.
[3] *Hist. of Tithes* (ed. 1618), ch. 9, § 4, p. 265.

the power or practice of appropriating tithes (notwithstanding these laws), which I reserve for consideration in my concluding chapter.[1] Meanwhile, it may be here observed, that the limited endowment of these parishes with one-third of the tithes established under Edgar's laws, did in many places long remain; and that it constituted a precedent, which, in the early days of appropriations and vicarages, was often acted upon by bishops, when settling the amount of stipend to be allowed by the appropriators to the vicar. Of both these facts proofs, sufficiently numerous, may be found in Bishop Kennett's *Case of Impropriations.*[2]

To those who believe, or think it probable, that in or before King Edgar's time a tripartite division of tithes, such as that of the *Capitulare Episcoporum*, was customary in England, the theory of Bishop Kennett, that the apportionment of one-third to the earlier parish churches arose out of that rule of division, may, perhaps, recommend itself. Kennett thought that the priest to whom one-third of the local tithes was conceded took that one-third for his own sustenance only, freed and discharged from all other obligations and burdens; and that the whole duty of hospitality and almsgiving to the poor (I presume, also, of providing for the repairs of churches) was thrown upon the other two-thirds payable to the monasteries.[3] To imagine, with-

[1] *Post*, pp. 305-314.

[2] *The Case of Impropriations and of the Augmentation of Vicarages and other Insufficient Cures*, etc. (1704). See pp. 27, 28, 29, 31, 41.

[3] *Case of Impropriations*, etc., pp. 16, 17, 27, 28, 29, 31, 32, 41. Bishop Kennett wrote with the practical object of throwing upon impropriated tithes a liability to augment the endowments of poor Vicarages, according to a doctrine (now exploded, and never tenable in law), which Noy, and some other lawyers of the seventeenth century, had maintained, and according to the analogy of the law of France. (See Jouy, p. 352, etc.)

out proof, that the one-third assigned to the priest of a manorial church was itself subjected to the rule of tripartite division, would, indeed, be extravagant; and that hypothesis, which Bishop Kennett certainly did not entertain, may be dismissed. But, on the other hand, there are many proofs, in that learned writer's own pages,[1] that there never was a time when a parish priest, whether rector or vicar, having cure of souls, was held to be exonerated from the general ecclesiastical duty of hospitality, according to his means, to the poor and to strangers; however scanty his endowment might be, and however free from apportionment into any definite shares. It is equally certain, that the conventual or baptismal churches, which retained two-thirds of the tithes under King Edgar's laws, did not retain them as trustees for the poor and for church repairs without any interest of their own, and did not use or apply them otherwise than as part of the common stock and general revenue of their several monasteries.[2] No reasonable presumption in favour of the existence of a definite proportionate rule for the distribution of tithes (as to which not only this law itself, but every other law as to tithes, ecclesiastical as well as civil, of the same or any other time, is absolutely silent) can be founded upon the fact that the proportion in which, under this law, the local tithes were divided between the greater and the smaller churches, was as two to one.

[1] See, as to Vicars, *Case of Impropriations*, etc., pp. 21, 58 (quoting the twenty-first article of the *Gravamina* of the University of Oxford in Henry V.'s time; and Lyndwode's *Provinciale; de officio Vicarii*, fol. 64).

[2] *Ibid.*, p. 63 (art. 20 of the *Gravamina* of the University of Oxford), p. 68; (Archbishop Peccham's letter, in A.D. 1282, to the Bishop of Hereford, against the Prior of Wenlock).

# CHAPTER VII

## FOURTH PERIOD—ECCLESIASTICAL LITERATURE: THE EGBERTINE COMPILATIONS

### § 1. *Introductory*

If, in examining that ecclesiastical literature of the tenth and eleventh centuries which has been the source of the idea that a tripartite division of tithes, or other church revenues, was anciently customary in England, I give the precedence to certain compilations with which the name of Archbishop Egbert is commonly associated, it is because these, more than anything else, have had a chief influence in establishing that notion in the minds of learned men, both of past and of recent times. If, indeed, it were once granted that those compilations contained canons for the government of his own diocese, codified by a great Northumbrian prelate in the middle of the eighth century, there must be an end of all controversy on the subject. For the 'Sacerdotal Laws,' which passed, from the Frank original described in a former chapter,[1] into all those compilations, contained these injunctions:[2]

[1] The *Capitulare Episcoporum;* see *ante*, pp. 37-39, and Appendix A.

[2] There are a few clerical variations in the different copies I have followed here the Andain text (Martene and Durand, *Ampliss. Coll.*, vol. vii. p. 26).

(*a*) 'That every priest teach all under his charge, so that they may know how duly to offer to God's churches the tithes of their whole means': (*Ut unusquisque sacerdos cunctos sibi pertinentes erudiat, ut sciant qualiter decimas totius facultatis ecclesiis divinis debite offerant*).

(*b*) 'That the priests themselves receive the tithes of the people, and write down their names, and what they have given, and decide it, according to canonical authority, in the presence of witnesses; and choose the first part for the "ornament" of the church; and dispense the second, by their own hands, compassionately and with all humility, for the use of the poor and strangers; and the priests alone are to reserve the third part for themselves': (*Ut ipsi sacerdotes populi suscipiant decimas, et nomina eorum, et quæcunque dederint, scripta habeant; et secundum autoritatem canonicam coram testibus dividant; et ad ornamentum ecclesiæ primam eligant partem, secundam autem ad usum pauperum atque peregrinorum per eorum manus misericorditer cum omni humilitate dispensent. Tertiam vero partem sibimetipsis soli sacerdotes reservent*).

That these injunctions formed part of a compilation made in the eighth century by Archbishop Egbert, or in his time under his name, was the belief of Spelman, Wilkins, and John Johnson, in whose collections of canons, etc., they were published from the Cottonian manuscript, now in the British Museum. Those learned men were followed by Bishop Kennett,[1] and Dr. Lingard,[2] in the same belief; and, in our own day, by such eminent Anglo-Saxon scholars as Kemble[3] and Thorpe.[4] And yet it had been pointed out, as far back as A.D. 1618, by Selden[5] (as it was

[1] *Case of Impropriations*, etc., p. 10, note. Southey, in his *Book of the Church*, and the late Mr. Brewer, evidently derived their views as to the division of tithes, and on some other points, from Bishop Kennett.

[2] *Antiquities of Anglo-Saxon Church*, vol. i. p. 93, note.

[3] *Anglo-Saxons in England*, vol. ii. p. 478.

[4] *Ancient Laws*, etc., vol. ii. pp. 97-127.

[5] *Hist. of Tithes* (ed. 1618), ch. 8, § 1, pp. 196-198.

afterwards by Baluze[1] and Mansi)[2] that the 'Excerptions,' with these articles as to tithes in them, could not have been compiled before the ninth century, and therefore could not possibly have been the work or of the time of Archbishop Egbert, who died in A.D. 766. Few who pay attention to literary criticism would now dispute the conclusions of Wasserschleben,[3] and of Mr. Haddan and Bishop Stubbs,[4] that none of these compilations (except the 'Penitential' part of two of them, of which I shall presently speak) have any pretension to be associated at all with Egbert's name; not only that they are not his, or of his time, but that there 'is not sufficient evidence to make it probable that they are even based upon anything which he compiled.'[5] Having examined the manuscripts at Cambridge and Oxford, and in the British Museum, from which they are derived, I do not think it superfluous to give a more particular account of them, than has yet been done in any publication that I have seen.

The twenty-one 'Sacerdotal Laws' of the Andain text occur in four of those 'Egbertine' manuscripts, which I arrange thus, in what I am led by internal evidence to think the true order of the works they represent: (1) That bequeathed by Archbishop Parker to the library of Corpus Christi College, Cambridge (marked K. 2 in Wanley's, and 265 in Nasmith's catalogue); (2) that numbered 718 in the Bodleian Library at Oxford; (3) that published by the Surtees Society[6] from a MS. in the National Library at Paris, in which it is a fragment preceding a 'Pontifical' ascribed to Archbishop

[1] *Capit. Reg. Franc.*, vol. ii. (ed. 1780) p. 1055, note.
[2] *Concil.*, vol. xii. pp. 411, 412.
[3] *Die Bussordnungen* (Halle 1851).
[4] *Councils*, etc., vol. iii. pp. 413-416, note. [5] *Ibid.*, p. 415.
[6] Publications of Surtees Society, vol. xxvii. (*Egbert's Pontifical*).

Egbert; and (4) that marked 'Nero, A1,' which forms part of the Cottonian collection in the British Museum. Of these, the third is copied from the second, or from the work which the second represents; of which there are said[1] to be also two complete copies in the Vatican Library. Of the first and fourth, I do not know that any copies exist except those at Cambridge and in the British Museum.

### § 2. *The Worcester Manuscript at Cambridge.*

The first of these four manuscripts belonged before the Reformation to the church of Worcester.[2] It is of the eleventh century, and its date (at all events the date of the earlier part of it) must be referred to some time during the episcopate of Wulstan, the second of that name, who was Bishop of Worcester from A.D. 1003 to A.D. 1023; for the volume opens with a form of the monastic vow of chastity, beginning thus: 'I, brother N., promise, etc., in the presence of the Lord Bishop Wulstan.' The volume contains a collection of many pieces, not all copied by the same hand. It has prefixed to it (in a handwriting much more modern than any part of the book, and therefore not attributable to the original compiler) this general title:

[1] Haddan and Stubbs, *Councils*, vol. iii. p. 414.

[2] K2 of Wanley, No. 265 of Nasmith. 'Codex membranaceus in 4to; sæculo xi. scriptus. In protocollo habetur forma voti castitatis a monachis faciendi, in hæc verba:—*Ego frater N. promitto, etc. etc., domino præsule Wlstano præsente*' (Nasmith: *Catalogus Librorum* MSS. *quos Collegio Corporis Christi in Academia Cantabrigiensi legavit Reverendissimus Matthæus Parker, Archiepiscopus Cantuariensis*, Cambridge, 1777). As to this MS. having belonged to the church of Worcester, see Strype's *Life of Parker*, vol. ii. p. 509, and Wanley's *Antiquæ Literaturæ Septentrionalis liber* (1715), p. 109.

'The penitential book of Egbert, the seventh Bishop of York from Paulinus, who was the first after him to receive the pall, in the seventh year of King Ceolwulf, A.D. 730.'

Among the contents of the volume, there are several works which the compiler could not possibly intend to ascribe to Egbert, because they are attributed by name to other persons, their true authors. There are two letters of Alcuin, to Archbishop Ethelhard of Canterbury and Archbishop Eanbald of York; the pastoral charge of Theodulph, Bishop of Orleans, to his diocese; and some of those homilies of Ælfric, which have often been quoted as proof that the doctrine of transubstantiation was not taught by the Anglo-Saxon Church.[1] I find nothing attributed to Egbert by any rubric of this manuscript except the 'Penitential,' which, after careful research, has been accepted as his genuine work by Wasserschleben, and by Mr. Haddan and Bishop Stubbs.

The twenty-one 'Sacerdotal Laws' of the Andain manuscript, under the rubric, *Jura quæ sacerdotes debent habere*, constitute the sixth piece in this collection. Setting aside the later title on the fly-leaf of the book (which, as I have said, is not attributable to the compiler or his scribes), there is no representation that there was any connection between those 'Sacerdotal Laws' and Archbishop Egbert. Of the seventh piece, which follows them, the rubric is: '*Here begin Excerptions from Canonical books*' (*Incipiunt Excerptiones de libris Canonicis*). It consists of 102 extracts from canons of councils and sayings of Fathers (with appropriate sub-titles), of which I shall say more when I speak of the Cottonian manuscript. Here,

[1] See Nasmith's Catalogue (as to pp. 159 and 174 of the manuscript book, No. 265); Whelock's *Bede*, p. 471; Strype's *Life of Archbishop Parker*, vol. ii., book iv., p. 509.

again, there is nothing to represent that Egbert was the collector of those extracts, or had anything to do with them. The eighth piece, which follows, is distinctly ascribed to Egbert by this rubric: '*Here begins the Excerption from the Canons of Catholic Fathers, and Penitential and Remedy for souls, of the Lord Egbert, Archbishop of the See of York*' (*Incipit Excerptio de Canon. Catholicorum Patrum et Pœnitentia et Remedium Animarum Dni Echberhti Archiepi Eborace Civitatis*). The piece thus introduced is identical with that which (according to the judgment of Wasserschleben, and of Mr. Haddan and Bishop Stubbs) was the genuine work of Archbishop Egbert.

I cannot but think, that the internal evidence here points to the library of St. Hubert's monastery at Andain as the probable source from which the author of this compilation may have derived that part of his materials which is relevant to my present inquiry. Among the manuscripts in that library (manuscripts of the tenth century) were the 'Sacerdotal Laws,' and also the genuine 'Penitential' of Archbishop Egbert. Of the 'Sacerdotal Laws,' as published by Martene and Durand (and of the differences between them and the *Capitulare Episcoporum* of the Metz manuscript), I have spoken in an earlier chapter.[1] The Worcester compiler copied them evidently from the Andain, and not from the Metz text. But Martene and Durand also published other manuscripts, equally ancient, from the same library, among which were two Penitentials of Anglo-Saxon origin—the one entitled, *A little book on remedies for sins* (*libellus de remediis peccatorum*); (which Wasserschleben and Mr. Haddan and Bishop Stubbs believe to be Bede's),[2] the other entitled, *Another little book on remedies for sins*,

[1] *Ante*, pp. 39, 40.

[2] Haddan and Stubbs, *Councils*, vol. iii. p. 326.

which is Egbert's.[1] The fact that both the 'Sacerdotal Laws' and Egbert's 'Penitential' passed into the collection of the Worcester compiler, under the rubrics which I have mentioned, is suggestive of a common source. The works of Bede and of Egbert (the letters of Alcuin also) were in the tenth and eleventh centuries much more likely to be recovered by English scholars from Gallican libraries, than to be known to them from originals or copies preserved in England. This compilation also contains the pastoral epistle of Bishop Theodulph[2] to his diocese of Orleans; who was a great prelate, made abbot of Fleury, and afterwards Bishop of Orleans, by Charlemagne, and in A.D. 818 deprived and exiled by Louis the Simple, and who died in A.D. 821. This seems sufficient to show that the Worcester compilation was the work of a man who had studied theology abroad.

I am bold enough to offer a conjecture as to who that compiler may, probably, have been. It is certain that he was a monk of Worcester; the first entry in the book points to the time of Bishop Wulstan; he was evidently a learned man, and a foreign traveller. These indications all agree with what we know of Oswald,[3] that monk of Worcester, who was sent abroad to visit the Gallican monasteries by and at the expense of Oswald the famous bishop; he visited the monasteries of Corbey, St. Bertin, St. Vedast, and St. Denis, and others not named by his biographer; he studied grammar at Fleury under Constantine, a learned monk of that time; and he lived till A.D. 1010, eighteen years after the death of Bishop Oswald, and seven after the succession of Wulstan to the see of Worcester.

[1] Haddan and Stubbs, *Councils*, vol. iii. p. 416.

[2] See *Biographie Universelle* (Brussels 1845-47), *in nom.* 'Théodulphe, évêque d'Orleans.'

[3] See *ante*, p. 211, note.

At Fleury he would naturally become acquainted with the pastoral epistle of Theodulph.

It does not appear that in the Andain manuscripts the 'Penitential' *libellus alter*, which in the rubric of the Worcester compilation is expressly attributed to Egbert, was inscribed with that name; the contrary is to be inferred. But if it was really his (as the best critics believe), it was doubtless known or reputed to be his in the monasteries where it was preserved; and it would be of especial interest to an Anglo-Saxon monk and student, the author's countryman. The works of Theodore, Egbert, and Bede were certainly brought into France by Alcuin, and into the northern part of the then Frank territory; for Alcuin had a cell at St. Josse in Ponthieu, a dependency of his abbey of Ferrieres; and it was to that place that his books from England came by sea.

Whatever may be thought as to the authorship of this Worcester compilation, it is at least certain, that the 'Sacerdotal Laws' contained in it came from France; and to infer, from their being found in such a collection or in any later members of the same literary family, that the tripartite division of tithes prescribed by one of their articles prevailed in England, would be no more reasonable than to infer from another article of the same series, which directed prayer to be offered for 'the Lord Emperor, and his sons and daughters,' that there were emperors to be prayed for in England. There is not a word in the volume, representing that the 'Sacerdotal Laws' had, or were supposed by the compiler to have, authority in England; any more than there is a like representation as to the pastoral epistle of Bishop Theodulph.

## § 3. *The Exeter Penitential in the Bodleian Library at Oxford.*

The Bodleian manuscript volume (No. 718) has been usually regarded[1] as belonging to the tenth, but may, perhaps, really belong to the earlier part of the eleventh century. It was among the books given by Leofric,[2] the last Bishop of Crediton and first of Exeter, to the church of Exeter. That see was removed from Crediton to Exeter in A.D. 1050; and Leofric died shortly before A.D. 1074. He was by birth or education a Burgundian of Lorraine, and he signalised his government of the church of Exeter by reversing there the policy of Dunstan and his colleagues; ejecting nuns, and supplying their places with secular canons,[3] under a rule of life borrowed from Lorraine.

The volume given by him to that church, with which we are now concerned, may be described as a Manual of Pastoral Theology upon the doctrine, practice, and casuistry of Confession and Penitence, divided into four books, made up from different sources. It appears, from the preface to the third, and the prologue and postscript to the fourth 'book,'[4] that this whole work was composed by a monk or clerk, at the request of an ecclesiastical superior (probably his bishop), for the instruction of others, under

[1] Haddan and Stubbs, *Councils*, vol. iii. p. 415.

[2] *Ibid.*; and see Dugdale's *Monasticon* (ed. Caley, Ellis, and Bandinel, 1819), vol. ii., p. 514, and app. iv. at 527. On the *last written page* of the Bodleian MS. volume is a letter from Pope Leo IX. to Edward the Confessor, objecting to Leofric's position at Crediton, as holding '*sine civitate sedem Pontificalem*'; and urging upon the king, '*ut de Credionensi villulâ ad civitatem Exoniæ sedem Episcopalem possit mutare.*' A copy of it is printed in Appendix F.

[3] See *post*, pp. 263-268.

[4] See Appendix C.

that Superior's authority. The first book consists mainly of the same genuine 'Penitential' of Egbert which is found in the Worcester manuscript, with the twenty-one articles of the (Andain) 'Sacerdotal Laws,' interpolated in a singular manner between the prologue and the body of the 'Penitential;'—down to which point (that is, to the end of the 'Sacerdotal Laws') it is copied in the Paris manuscript, published by the Surtees Society;[1] which there breaks off. At the end, however, of this first book, there are certain additions, to be presently described, which form no part of Egbert's 'Penitential.'

At the beginning of this volume a slip of paper has been pasted in, containing this title in a modern hand—'*The Penitential Book of Egbert, Archbishop of York*' (*Liber Penitentialis Egberti Aepi Ebor*);—which may be disregarded. Three pages of extracts from Papal decrees, irrelevant to the general subject of the volume, follow. These, also, are in a different and later hand from the rest, and they precede the proper paging. On the next page is a rubric, '*Here begin the Articles of the Penitential Book*' (*Incipiunt Capitula libri Poenitentialis*), introducing an epitome of the different matters which, in Archbishop Egbert's genuine 'Penitential,' follow the prologue;—no mention being made in it of the 'Sacerdotal Laws.' After this comes another rubric, which seems to be taken almost literally from that which in the Worcester manuscript introduces Egbert's genuine 'Penitential'—'*Here begins the Excerption from the Canons of Catholic Fathers of the Penitential Book for Remedy of Souls of Egbert, Archbishop of the See of York* (*Incipit Excerptio de Canonibus Catholicorum Patrum Poenitentialis Libri ad*

[1] Vol. xxvii. of the Surtees Society's publications.

*Remedium Animarum Ecgberhti Archi Epi Eburacæ Civitatis*). Then comes the prologue; and, immediately after it, are interjected the twenty-one 'Sacerdotal Laws' of the Andain and the Worcester manuscripts, preceded by a rubric almost identical with that in the Worcester manuscript, '*These are the Priests' laws, which they ought to observe*' (*hæc sunt jura Sacerdotum, quæ tenere debent*). Then succeeds the body of the genuine 'Penitential'; divided under nineteen heads, each preceded by its appropriate rubric. A prayer is added, and, after that (introduced by a rubric, '*Here begins the order of Confession according to Jerome; how a Christian ought to confess his sins*'), is a penitential formulary, consisting of litanies first,—prayers by the penitent,—questioning by the confessor,—several forms of confession,—the confessor's answer,—prayer by both together,—the priest's parting admonition; and, finally, a direction to the penitent to return to his home, praying for grace, that he may observe the priest's injunctions.

After all this, the first book ends with the rubric, '*The end of the Penitential Book of Archbishop Egbert*' (*Fin. lib. Poenitential Ecgberhti Archi Epi*).

Nothing in the volume, except this first book, is ascribed, by any title or rubric which really belongs to the compiler's work, to Archbishop Egbert. But the 'Sacerdotal Laws,' and the formulary of the 'order of confession according to Jerome' at the end, do appear, according to the letter of the initial rubric before the prologue, and of the final rubric which closes the first book, to be attributed to him.

I doubt whether this was the compiler's intention. I think it probable, that the matter which was not Egbert's was added, by way of supplement, as germane to the

matter of the book, and practically useful for its application; and that it did not seem to the compiler inconsistent or improper still to describe the book as Egbert's, without noticing the interpolation of the 'Sacerdotal Laws' (taken, as the 'Penitential' itself probably was, from the Worcester collection) or the addition of the formulary. The formulary (expressly said to be according to St. Jerome) speaks for itself. Of the interpolation of the 'Sacerdotal Laws' between the prologue and the body of the 'Penitential,' I will state what seems to me to be the probable explanation.

For this purpose it is necessary to describe shortly the nature of the prologue, and of the body of Egbert's 'Penitential.'[1]

The prologue is an exhortation to those priests who are to act as confessors to penitents, and prescribe medicines (an analogy dwelt upon with much earnestness) for moral and spiritual diseases. It urges upon them the duty of discrimination, and attention to what (following the same analogy) may be called the diagnosis of spiritual casuistry. It enforces those precepts by citations from Gregory Nazianzen, and from the prophet Ezekiel; and it refers to 'the apostles and holy fathers, and, afterwards, Paphnutius' (an anchorite of Upper Egypt, a man of much influence and reputation for sanctity in the fourth century,[2] whose name is here written *Penufius*), 'and after him the canons of the holy fathers, and many more, such as Jerome, Augustine, Gregory, and Theodore,' as the founders and expounders of this method of discipline;

[1] See them printed in Haddan and Stubbs, *Councils* (vol. iii. pp. 416-431), from Wasserschleben's text, after a Vienna manuscript.

[2] See the Acts of the first Council of Nicæa, in Mansi, *Concil.*, vol. ii. p. 906.

adding (which explains the reference to the 'canons of the Catholic fathers,' and the use of the word 'Excerption' in the rubric) that the writer had faithfully written down what he found in the sayings and opinions of all those authorities; (*ex quorum omnium ista descripsimus dictis et sententiis veraciter*).

As to the character of the body of the work, it is sufficient to mention a few of the titles or headings of its nineteen articles; such as (1) *What are deadly crimes;* (3) *Of lesser sins;* (5) *Of covetousness*, etc.; (6) *Of homicides*, etc.; (17) *Of the redemption of penance;* (18) *How penance may be abridged*, and (19) *How the priest ought to receive penance.* It is a graduated code of penances, for different offences against religion and morals; in its first aspect severe, but relaxed by allowing the principle of commutation.

Towards the middle of the prologue, this exhortation is addressed to candidates for the priesthood:

'Now, therefore, O my brethren, let him who desires to receive the sacerdotal authority first think for the sake of God upon his arms, and prepare them before the bishop's hand touches his head: that is, the psaltery, the lectionary, the antiphonary, the missal, the baptismal office (*baptisterium*), the martyrology through the whole course of the year for preaching, and the cyclical reckoning[1] of time (*compotum cum cyclo*); *that is, the sacerdotal law* (*hoc est, jus sacerdotum*) *and, after that, his "Penitential,"* ' etc.

It has been seen, that the twenty-one 'Sacerdotal Laws,' with the rubric before them, '*Hæc sunt jura sacerdotum quæ tenere debent*,' are interjected between the prologue and the practical part of the 'Penitential.' The explanation

[1] *I.e.* of Easter, and the other movable feasts, etc.

seems to me to be, that the compiler, finding in the prologue this direction, and also finding in the monastic collection before him (if it was the Worcester collection or any similar text from which he copied), these 'Sacerdotal Laws,' thought it convenient to put them in, by way of supplement to the enumerated service-books and offices of the Church, which would be otherwise accessible to his readers. And he put them into the particular place where they are found, because, forming no part of the 'Penitential' itself, they nevertheless seemed to him germane, as Sacerdotal Law, to the preliminary course of study recommended.

The verbal correspondence of the rubrics which I have mentioned with those of the Worcester text, as well as a clerical error, not found either in the Andain or in the Metz manuscript, but which occurs in a contracted form in the Worcester text, and is here expanded without contraction, leads me to think it probable, that the compiler of the Exeter manual may have had before him, and copied from, that Worcester text. The error in question is in the article as to the division of tithes, which was to be made (according to both the Gallican texts) '*before witnesses*' (*coram testibus*). The word *testibus*, if written in a contracted form, might be miscopied by a rapid transcriber, so as to be read *timentibus;* and *timentibus* (contracted) is the word in the Worcester text. It is *timentibus* at full length in the Exeter text, and in the fragment copied from it, which the Surtees Society[1] published; it is also *timentibus* (contracted) in the later Cottonian text. The participle *timentibus* (*fearing*), without any noun to be governed by it — and there is none in any of these texts — left the

[1] Vol. xxvii. of the Surtees Society's publications.

sense imperfect; it could not (standing alone) be, and it was not in fact, correct. For supplying after it (as most of the English editors did) the word *Deum* (God) there is no authority in any manuscript. Such an error, repeated as it is throughout this particular family of documents, is indicative (as it seems to me) of a common origin; and, if so, that origin may have been in the Worcester collection. Nor is it improbable that Bishop Leofric might have obtained the manual, which he gave to the church of Exeter, from the conventual church of Worcester, then famous for learning. Leofric's immediate predecessor at Crediton, Livingus, had been translated to that see.

### § 4. *The Worcester 'Excerptions' in the Cottonian Collection.*

The manuscript volume from which the compilation commonly known as the 'Excerptions of Egbert' was printed by Spelman, Wilkins, and Thorpe (which formed part of Sir Robert Cotton's library, and is now in the British Museum), also belonged to the church of Worcester.[1] It does not contain Egbert's 'Penitential,' or any part of it. It is a mixed collection of Anglo-Saxon laws, etc., and ecclesiastical documents, beginning with the laws, etc. (in Anglo-Saxon) of Canute, Edgar, Alfred, Athelstan, Edmund, and Ethelred; after which comes a Latin hymn in honour of St. Dunstan; and, farther on, the 'Excerptions,' also in Latin. Mr. Thorpe[2] says of the 'part of the volume containing Anglo-Saxon laws,' that it was

[1] Thorpe's *Ancient Laws*, etc. (vol. i., MS. G. in his 'List of Manuscripts,' etc., preceding table of contents; 'Nero A. 1' of the Cottonian collection).

[2] *Ibid.*

written, 'apparently,' in the beginning and middle of the eleventh century. Of the 'Excerptions,' Selden[1] considered the writing to be of about the time of Henry I. They are preceded by a short preface, about church canons; after which follows a rubric, in the body of the text: '*Here begins the sacerdotal law*' (*Inc. jus sacerdotale*); and opposite to it, in the margin, another rubric (a thing unusual in the volume): '*Here begin the Excerptions of Egbert, Archbishop of York, concerning Sacerdotal Law*' (*Incipiunt Excerptiones Ecgberhti Arcipi Eburace civitatis de Sacerdotali Jure*). I infer, that this marginal title was not found in the book or books (whatever they may have been) from which those 'Excerptions' were taken; and this seems to have been the view of the framer of a comparatively modern table of contents prefixed to the whole volume, in which notice is taken of the fact that some of them were derived from Frank 'capitulars.' If the marginal rubric was meant to apply to *all* the 'Excerptions' which follow, the description was not happy; for a large number of them relate to other subjects, and not to the law or duties of the priesthood.

I will now state what those 'Excerptions' are.[2] First come the twenty-one 'Sacerdotal Laws' of the Andain manuscript. Then seven more[3] (all taken from Frank capitulars or Gallican canons), which, from their subject matter, might be considered to belong to the same category. One of these[4] is Charlemagne's capitular of A.D. 813 (confirming canons to the same effect made in the same year at the Synods of Mentz and Arles), directing that 'churches established of old should

[1] *Hist. of Tithes* (ed. 1618), ch. 8, § 1, p. 196.
[2] Thorpe's *Ancient Laws*, etc., vol. ii. p. 97.
[3] *Ibid.*, pp. 100, 101 (arts. 22-28). [4] Art. 24.

not be deprived of tithes or of any other possessions, so as to give them to new churches.' This (which is also one of the articles following the twenty-one in the Andain manuscript, and not in the Metz), is here given in the words of the Council of Mentz. Two others are from the capitulars of A.D. 816, made by Louis the Simple at Aix-la-Chapelle,—the 'manse ordinance,' and the first part of the ordinance against the appointment or removal of priests without the authority of the bishop; both which have been stated in an earlier chapter of this work.[1] These seven are succeeded by a long series of extracts, 135 altogether,[2] from the (so-called) Apostolical canons, and from Oriental, African, Roman, Peninsular, Gallican, and Irish councils, passages of Scripture, and writings of Fathers and Popes; seventy-two of which are also found in the Worcester manuscript at Cambridge.[3] And, although the order of the extracts common to both collections is, in the Cottonian collection, often changed, it corresponds to an extent sufficient to prove that the author of the later Worcester 'Excerptions' borrowed from the earlier work; which (if he was a Worcester monk) was in the library of his own monastery. There are (for example) eleven extracts together in one part of the series, and nine more in another, which are not only the same, but in the same order.[4] The preface,[5] also, of the Cottonian 'Excerptions'

[1] Arts. 23 and 25. [2] Beginning with art. 29 (*ibid.*, p. 101).

[3] See Appendix D.

[4] The fifty-second to the sixty-second (both inclusive), and again, the seventy-first to the seventy-ninth (both inclusive) of the Cambridge 'Excerptions,' are the same with the sixty-third to the seventy-third (both inclusive), and the eighty-third to the ninety-first (both inclusive), of the Cottonian 'Excerptions.'

[5] Thorpe's *Ancient Laws*, etc., vol. ii. p. 97.

contains a passage attributed to 'Augustine, Bishop of Orleans,' which is the first of the 'Excerptions' in the Cambridge manuscript after the twenty-one 'Sacerdotal Laws.'

Further comment on these Cottonian 'Excerptions,' upon the ascription of which to Archbishop Egbert so many learned men have founded conclusions, seems to be superfluous. I may mention, however, as indicative of their late date and true character, certain things. The article numbered by Mr. Thorpe 133[1] is (as Mansi[2] has pointed out) taken *verbatim* from the biography of Gregory the Great, by John the Deacon,[3] a monk of Monte Cassino, who wrote about A.D. 875 (above a hundred years after Egbert's death), and dedicated his work to Pope John VIII. There are articles (*e.g.* those numbered 141 and 144 by Mr. Thorpe[4]) taken from the 'decretals' of the early Popes fabricated by the false Isidore, and from the spurious Acts of the pretended Roman Council under Pope Sylvester. Another (the 102d[5]) attributes to Augustine the passage, quoted as his in the *Decretum* of Gratian, in which tithes are described as 'the tributes of churches and of needy souls,' and are commanded to be paid from the soldier's wages, the merchant's gains, and the artisan's earnings. Another (the 124th[6]) allowed the husband of a woman who had left him and would not be reconciled to marry again, with his bishop's consent, after five or seven years; declaring, at the same time, that this would be adultery, to be expiated by penance for three years, or for the man's whole life.

[1] Thorpe's *Ancient Laws*, etc., p. 118.

[2] *Concil.*, vol. xii. pp. 411, 412.

[3] *Vita S. Gregorii*, lib. ii., cap. 38. See Mansi, *Concil.*, vol. xii. p. 411.

[4] Thorpe, *Ancient Laws*, etc., vol. ii. pp. 120, 121.

[5] *Ibid.*, p. 112 (see *ante*, p. 46).

[6] *Ibid.*, p. 116.

Into the question, whether these 'Excerptions' were, as some writers have thought,[1] the work of Hucarius, a deacon of St. German's, in Cornwall, who is said to have lived in the reign of Harold Harefoot (A.D. 1035-1039), I do not think it necessary to enter. It seems hardly probable, that the work of a Cornish deacon would be preserved in the library of the church of Worcester, and not elsewhere, and would bear the relation which this work does to another and earlier compilation, also in that library. If Hucarius was concerned in any of these compilations, it may have been the second in date—that which Bishop Leofric presented to the church of Exeter. But it is enough for my purpose to have exhibited the real nature and character of all these documents, and to have traced, as far as possible, their connection with each other, and with the 'Sacerdotal Laws' of Andain.

[1] See Johnson's *Laws and Canons* (Oxford ed. 1850), vol. i. p. 181 (editor's note); and Bale (p. 152) and Leland, there referred to. Also Mansi, *Concil.*, vol. xii.; *Præmonitio*, p. 411; and Wasserschleben, *Die Bussordnungen*, etc., preface, pp. 44, 45 (Halle 1851).

## CHAPTER VIII

### FOURTH PERIOD—AELFRIC AND OTHER WRITERS OF THE GALLICAN SCHOOL

### § 1. *The Canterbury 'Statuta Synodorum.'*

THE compilations spoken of in the preceding chapter made no claim to authority. They were collected from miscellaneous sources, without special reference to England, or to English laws or customs. Of the canons and other precepts which they brought together, some were, others were not, generally received in the Western Churches. They were composed for the information and edification of priests or clerks, by men who had been students in foreign schools. They contain some things which could not possibly have been meant to be acted upon in England; for example, an Irish canon,[1] directing lots to be cast whether a man who had stolen goods from a church should have his hand cut off, or be thrown into gaol, 'there long to fast and mourn.'

A manuscript, now lost, which Selden[2] has described, and which formerly belonged to St. Augustine's Abbey at Canterbury, and was afterwards in Sir Robert Cotton's library, must have been of the same character. It was entitled,

[1] Art. 74 of *Excerptiones Ecgberti* (Thorpe's *Ancient Laws*, vol. ii. p. 108). [2] *Hist. of Tithes*, ch. 8, § 5 (ed. 1618, pp. 210-213).

'*Statuta Synodorum*' (*Synodical Constitutions*); and, in its original form, was a collection, made in King Athelstan's time (A.D. 924-940), of Roman, Gallican, and Irish canons, with extracts from St. Augustine, St. Jerome, Gregory the Great, and Isidore of Seville, and some from Gildas and St. Patrick; whence Selden inferred, that the compiler was of British or Irish origin. As to tithes, that collection contained one paragraph; in which no council or canon was referred to, but only the Levitical laws, and a passage attributed to St. Augustine.

To this account of the original collection Selden[1] adds, that there was appended to it, in a later hand of uncertain date, a supplement, with this inscription: '*Incipiunt pauca judicia, quæ desunt de supra-dictis*,'—in which the ancient code of the Roman Church, and some other authorities from the same fathers, and from a few of the older councils, were cited. 'But' (he proceeds)—

'No denominated Pontifical or Synodal is remembered there for tithes; only the texts of Moses for tithes, first fruits, the first born, and such more, are numbered together. And then follows a chapter, "*De divisione decimarum*," with this declaration: "*Lex dicit, ipsi sacerdotes populi suscipiant decimas, et nomina eorum, quicquid dederint*,[2] *scripta habeant, et secundum autoritatem canonicam*," etc.,—in the self-same words as are attributed to the "Excerptions" of Egbert.'

That '*Lex dicit*' (he added) 'may be referred to the canon related out of the "Excerptions" of Egbert; but whence that canon is originally, I have not yet learned.'

We know what Selden did not: that the 'Law,' to which

[1] *Hist. of Tithes*, ch. 8, § 5 (ed. 1618), p. 211.

[2] The '*quicquid dederint*' (*whatever they have given*), coincides in sense with a clerical error of the Andain text, which the other Anglo-Saxon copyists corrected into '*quicunque dederint*' (*whoever have given*), —the Metz reading.

the compiler of the *pauca judicia* referred, was a local constitution of the bishops of a particular district in the Netherlands or France,—the fifth article of the Andain 'Sacerdotal Laws.' Its occurrence, in such a supplement to a work of King Athelstan's time, confirms the conclusion, that it had become known in this country by means of that intercourse between English ecclesiastics and Gallican monks and monasteries, which in so many ways took place during the days of Oswald, Ethelwold, and Dunstan.

### § 2. *Aelfric 'the Grammarian.'*

There was a period, of perhaps about twenty years, falling within the latter and most troubled part of King Ethelred's reign, during which the influence of the Andain 'Sacerdotal Laws,' upon some persons of reputation belonging to the Benedictine party in England, became very manifest. Among these was Aelfric 'the grammarian,' who composed a Pastoral Epistle or Charge[1] for a bishop named Wulfsin, of which it is now necessary to speak.

Concerning this Aelfric, there has been great controversy.[2] Wharton,[3] the author of *Anglia Sacra*, identified him with Aelfric Putta, Archbishop of York from A.D. 1023 to 1052; Mores[4] (who was followed by Dean Hook)[5] identified him with Aelfric, Archbishop of Canterbury from A.D. 995 to 1005. Both opinions are certainly

[1] See Thorpe's *Ancient Laws*, vol. ii. p. 342; Johnson's *Laws and Canons*, vol. i. p. 382 (ed. 1880).

[2] The arguments of Archbishop Ussher, and other writers earlier than the eighteenth century, are stated by Wharton, '*De duobus Aelfricis*' (*Anglia Sacra*, vol. i. pp. 125-132); and by E. R. Mores, *Aelfric*, ed. 1789, pp. 3-18.

[3] *Anglia Sacra*, vol. i. pp. 125-132. [4] Mores, pp. 18-42.

[5] *Lives of Archbishops*, vol. i. pp. 436, 437.

erroneous.[1] The document in question (miscalled 'Aelfric's Canons'), must have been composed between A.D. 992 and 1001; in the former of which years Wulfsin, who had been made Abbot of Westminster by Archbishop Dunstan, was advanced to the see of Sherborne.[2] There was no other bishop, of the same or the like name, for whom it could have been written. Wulfsin lived till A.D. 1001;[3] he was, like Aelfric, zealous for monasticism; and in A.D. 998,[4] under a charter of that year from King Ethelred, he expelled secular clerks from his conventual chapter of Sherborne, and established Benedictines in their places.

The preamble to the (so-called) Canons is expressed in terms which show clearly that the writer was not, at the time when it was written, a bishop. But the Aelfric who in A.D. 995 became Archbishop of Canterbury was already, in A.D. 992, Bishop of Ramsbury, to which see he

[1] Dean Hook (*Lives of Archbishops*, vol. i. p. 436) accepted Mr. Thorpe's view, that 'the real question lies between Elfric, Archbishop of Canterbury, and Elfric, Archbishop of York'; adding, that, 'if this point be conceded, the question is at once settled by internal evidence': —for which purpose he relied upon historical proofs of the arrogant worldly character of that Archbishop of York. But the question is not so limited. Aelfric was in those days a very common name. Within about a hundred years, from A.D. 941 to 1038, it was the name of eight bishops; it was borne by secular persons of note also, to identify and distinguish whom is hardly less difficult than in the present instance. (See Freeman's *Norman Conquest*, vol. i. p. 627, App. cc.) Mr. Baron, the learned editor of Johnson's *Laws and Canons*, in his note to vol. i. p. 387, justly relies upon William of Malmesbury, as showing that the 'grammarian' was not either of those archbishops.

[2] Stubbs' *Registrum Sacrum Anglicanum*, p. 17.

[3] *Ibid.* (His successor, Ethelric, was consecrated in that year.)

[4] See King Ethelred's charter of A.D. 998 (granted 'on the advice of Archbishop Aelfric'), in Wharton's *Anglia Sacra*, vol. i. p. 170; and see Mores, *Aelfric*, p. 32.

had been consecrated in A.D. 990.[1] The author of the Canons, after he had translated that work (which seems to have been first composed in Latin) into Anglo-Saxon, as we have it, described himself as a 'monk and mass-priest;'[2] and at another time, which could not have been earlier than A.D. 1002, he addressed an Anglo-Saxon translation of another document, of the same character, as 'Abbot Aelfric' to 'the Venerable Archbishop Wulstan'[3] (*Aelfricus Abbas, Wulstano Venerabili Archiepiscopo*). Wulstan, so addressed, was Bishop of Worcester and Archbishop of York from A.D. 1003 to 1023.[4]

The author of the Canons was not, therefore, Aelfric, Archbishop of Canterbury. Neither could he have been Aelfric Putta, Archbishop of York. The 'grammarian' had been a pupil of Ethelwold,[5] at Abingdon or Winchester, and was afterwards Abbot of Malmesbury. A charter of King Edgar, preserved by William of Malmesbury,[6] shows that he was placed in charge of that Abbey before A.D. 974, on account of his great knowledge of ecclesiastical 'manners and offices.' The same chronicler (William of Malmesbury) speaks of him in his Life of Aldhelm,[7] as 'a very learned man, and especially a most elegant translator' (*peritum litterarum, præsertimque elegantissimum interpretem*); as having shown

[1] Stubbs, *Reg. Sacr. Anglic.*, p. 17.

[2] Preface to *Sermones Catholici*, to which the (so-called) Canons were appended. See Wharton, *De duobus Elfricis* (*ubi supra*), p. 130; and Mores, *Ælfric*, p. 8.

[3] See Thorpe, *Ancient Laws*, vol. ii. p. 364.

[4] Stubbs, *Reg. Sacr. Anglic.*, p. 17. He was consecrated to Worcester and York in A.D. 1003.

[5] Wharton's *Anglia Sacra*, vol. i. pp. 129, 130.

[6] A.D. 974. See Wharton, *Anglia Sacra*, vol. i. p. 128; Johnson's *Laws and Canons*, vol. i., ed. 1880, p. 387, note.

[7] Wharton, *Anglia Sacra*, vol. ii. pp. 32, 33.

architectural skill in additions which he made to the buildings of the monastery; as having been appointed in his old age to the see of Crediton, which he held for four years; and as having left behind him excellent works (*codices, non exigua ingenii monumenta*). It cannot be supposed that he would have been made Abbot of Malmesbury before he was thirty years old (the age necessary at that time for priest's orders). If, therefore, he had lived till the death of Aelfric Putta, Archbishop of York, he would have been more than a centenarian.

With respect to his other writings, the *Institutes of Polity*[1] (which belong to Ethelred's reign) correspond closely with the 'Canons,' in several passages;[2] so closely, as to suggest one authorship; and the Pastoral Epistle addressed to Archbishop Wulstan,[3]—a work of the same nature, also written with a view to its delivery as a charge by a bishop to his clergy,—is plainly by the same hand. It is animated by the same monastic zeal; it enforces the rule of clerical celibacy by the same assertions and arguments;[4] it assumes in the same manner ignorance on the part of the secular clergy of the elements of ecclesiastical knowledge[5]; and it instructs them on the same points.[6] In one respect, however, there is a noteworthy difference. The *Institutes* and the Pastoral Epistle do not (although the charge written for Bishop Wulfsin does) borrow from the Metz or Andain 'Sacerdotal Laws' the injunction for a

[1] Thorpe's *Ancient Laws*, vol. ii. pp. 305-341.

[2] *E.g.*, art. 22 (as to second marriages of laymen), and art. 23 (as to the Nicene and other Oecumenical Councils), *ibid.*, pp. 333, 335.

[3] *Ibid.*, pp. 364-393.

[4] Articles 9-12, 21, 32, 38-40 (*ibid.*, pp. 369, 373, 377).

[5] Articles 6-8, 34-37 (*ibid.*, pp. 367, 379).

[6] Articles 23-31, 42, 43, 49, 50 (*ibid.*, pp. 374-377, 387).

tripartite division of tithes. They are wholly silent as to any such division; although in the *Institutes*, among other invectives against married priests, is one[1] which imputes to them neglect of their churches and of the poor, and of charitable works.

The times had changed much since the 'peaceful' days of Edgar, and the ascendancy of Dunstan. The Church had once more to contend with heathenism; and within the Church monasticism was no longer all-powerful. The *Institutes of Polity* and the two pastoral epistles or charges written for Wulfsin and Wulstan, as well as some of the documents commonly classed among the secular acts of King Ethelred's reign, reflect that change, and show a disposition to withdraw from the rural secular clergy the rights which in the time of Edgar had been conceded to them. 'Beloved' (said the pastoral epistle addressed to Archbishop Wulstan),[2] 'we cannot now forcibly compel you to chastity; but we admonish you,' etc. And, at the end of the *Institutes*,[3] there is something very like a denunciation of King Ethelred himself:

'No one should injure a church or wrong it in any way. But now churches are, nevertheless, far and wide, weakly *grithed*, and ill served, and cleanly bereft of their old rights,

[1] Art. 19 (Thorpe, *Ancient Laws*, vol. ii. p. 329). It speaks of priests 'who will not, or cannot, or dare not, warn the people against sins, and correct sins, but desire, nevertheless, their monies for tithes, and for all church dues,' etc. . . . 'It is all the worse when they have it all, for they do not dispose of it as they ought, but decorate their wives with what they should the altars, and turn everything to their own worldly pomp, and to vain pride, that they should do for the honour of God, in ecclesiastical things, or for the advantage of poor men, or in the buying of war-captives, or in some things that might be for lasting benefit both to themselves and also to those who give them their substance for the favour of God.'

[2] Art. 33 (Thorpe, *Ancient Laws*, vol. ii. p. 377). [3] *Ibid.*, p. 341.

and within stript of all decencies; and ministers of the Church are everywhere deprived of their rank and power. And woe to him who is the cause of this, though he may not think so! Because every one is certainly the foe of God Himself, who is the foe of God's churches, and who impairs or injures the rights of God's churches: as it is written, "*Inimicus enim Christi efficitur omnis, qui ecclesiasticas res usurpare injuste conatur.*" And awfully spake St. Gregory concerning him, when he thus said, "*Siquis ecclesiam Christi denudaverit, vel sanctimonia violaverit, anathema sit: ad quod respondentes omnes dixerunt Amen.*" Great is the necessity for every man that he strenuously secure himself against these things; and let every friend of God constantly take care that he do not too greatly misuse the Bride of Christ. It is the duty of us all to love and honour one God, and zealously hold one Christianity, and with all our might renounce every heathenism.'[1]

Aelfric was a monk, endeavouring in those times and under those circumstances to support or restore monastic institutions and principles, which he identified with those of the Church and of true religion. The bishops for whom he wrote were like-minded with himself. From the time of the *Regularis Concordia* and Dunstan's Council of Winchester they were Benedictine monks, identified in feeling and interest with the conventual bodies of which they were (in most cases) heads; and at this time Wulfsin at Sherborne, and Archbishop Aelfric at Canterbury, were completing Dunstan's work, by substituting in the chapters of those cathedral churches Benedictine monks for secular canons.

[1] This concluding sentence, '*It is the duty*,' etc., corresponds *verbatim* with article 34 of the ordinances of A.D. 1008 (Thorpe, *Ancient Laws*, vol. i. p. 313).

## § 3. *Aelfric's Canons.*

I pass now to the consideration of the document called 'Aelfric's Canons.'[1]

The preamble shows, that the bishop had asked Aelfric to compose for him an address or visitation charge, to be delivered by him to his clergy:

'The humble brother Aelfric to the venerable Bishop Wulfsin, health in the Lord. We have willingly obeyed thy command, but have not presumed to write anything of the episcopal degree, because it is yours to know how you ought, by excellence of manners, to become an example to all, and by continual admonitions to exhort those under your charge to the salvation which is in Christ Jesus. Yet I say, that you ought oftener to have addressed your clergy and reproved their negligence; inasmuch as, through their perverseness, the canonical laws and the religion and doctrine of Holy Church are well nigh abolished. Therefore deliver thy soul, and tell them what things ought to be observed by the priests and ministers of Christ, lest thou also perish like them, if thou be accounted a dumb dog. But we write this letter which follows in the English tongue, as if dictated out of thine own mouth, and as if thou hadst spoken to thy clergy, beginning thus,' etc.

What is here said as to the general departure of the clergy from 'the canonical laws, and the religion and doctrine of Holy Church,' excludes the supposition that the injunctions which follow are evidence, not only of what the writer thought proper to recommend, but of the practice at that time of the clergy of the Anglo-Saxon Church.

The first nine articles[2] relate to marriage. Their intention is to enforce upon the secular clergy the strictest

[1] Thorpe, *Ancient Laws*, vol. ii. pp. 343-363.

[2] *Ibid.*, pp. 343-347.

rule of celibacy, and upon those who were married the duty of forsaking their wives.

'I say to you, priests' (so the bishop is made to open his charge), 'that I will not bear your negligence in your service, but I will truly say to you how it is constituted[1] concerning priests. Christ Himself established Christianity and chastity, and all those who walked with Him, in His way, forsook all worldly things, and society of women. Wherefore, He Himself said in one of His gospels, "He who hateth not his wife is not a disciple worthy of Me."'

An account follows of the synod of 318 bishops, held at Nicæa against Arius, and of their decree,[2] that 'neither bishop, nor mass-priest, nor deacon, nor any regular canon, should have in his house any woman,' except those in certain specified degrees of very near relationship.

In the sixth article, married priests are supposed to argue, first, from the reason and necessity of the case,—which is denied;—and then from the example of St. Peter;—the reply to which is, that St. Peter had a wife 'by the old law, before he turned to Christ; but he forsook his wife, and all worldly things, after he had turned to Christ, who established chastity.'

The seventh article distinguishes, as to marriage, between the Levitical and the Christian priesthood; the eighth quotes a spurious prohibition[3] of the Nicene Council against the ordination of persons twice married,

[1] Mr. Thorpe's translation is followed, even when it might seem capable of improvement.

[2] Canon 3 of first Nicene Council (Mansi, *Concil.*, vol. ii. p. 670). They did *not* forbid a priest or other clerk to live with his wife. On the contrary, they refused to do so, by the advice of Paphnutius (*ibid.*, p. 906). The third canon was against having *introductam* (συνεισακτον) *mulierem.*

[3] There is no such matter in the Nicene canons.

or who had married widows; the ninth states a canonical ban[1] put upon the second marriages (though tolerated) of laymen.

Then follow nine articles,[2] in which the clergy are informed that 'seven degrees are established in the Church;' which degrees are enumerated, with a statement of the office and duty of each order. As to bishops, the seventeenth article says:

'There is no difference betwixt a mass-priest and a bishop, save that the bishop is appointed for the ordaining of priests and confirming of children, and hallowing of churches, and to take care of God's dues; for it would be too multifarious if every mass-priest so did; but they have one order, though the latter have precedence.'

A series of fourteen articles,[3] almost entirely as to the duties of priests, succeeds. Of these I shall speak particularly.

The thirty-third article[4] enumerates the four first general synods, which (it says) 'are to be observed, so as the four books of Christ, in Christ's church. Many synods have been held since, but these four are, nevertheless, the principal,' etc.

The thirty-fourth article[5] charges the secular clergy with 'despising all their ordinances'; 'while monks hold the ordinances of one man, the Holy Benedict, and live according to his direction,' etc. . . . 'Ye also have a rule if ye would read it; . . . but ye love worldly conversations,

[1] See seventh canon of Neo-Cæsarea; and Gratian, *Decretum*, pars ii., causa xxxi., quæst. i., § 8. The nuptial benediction was not to be given; and no priest was to be present at the marriage feast. Some canons added penance.

[2] Thorpe's *Ancient Laws*, vol. ii. pp. 347-349 (arts. 10-18).

[3] Arts. 19-32 (*ibid.*, pp. 351-355).

[4] *Ibid.*, pp. 355, 356.

[5] *Ibid.*, p. 357.

and will be reeves, and neglect your churches, and the ordinances, totally.'

'But' (pursues the thirty-fifth article [1]) 'we will recite the ordinances to you.' Then follow injunctions against certain unseemly proceedings at and with respect to funerals, against gay clothing, and against the assumption of the monastic habit; and (in the thirty-sixth article [2]) a very long discourse as to the observances of Good Friday and Eastertide, of the Lord's Day, and of other festivals and fasts; with much instruction about the Holy Sacrament (the *housel*), which is said to be 'Christ's body, not bodily, but spiritually; not the body in which He suffered, but the body about which He spake, when He blessed bread and wine for housel one day before His passion.'[3] The whole document ends (in the thirty-seventh article [4]), with a few admonitory words.

I return to those fourteen articles which relate to the duties of priests. These are not, like the twenty-one 'Sacerdotal Laws' of the Egbertine compilations, transcribed from the Metz or Andain manuscripts, or from any other copy of the same original. Aelfric put the matter which he adopted from that source into his own words, enlarging some things, abridging others; and he did not adhere exactly to the arrangement which he found there. But, nevertheless, the matter of those articles, together with the order and sequence of most of them, and the correspondence of thought and phrase in some with the Gallican original, prove unequivocally that the *Capitulare Episcoporum* was the fountain-head from which all but two of them were derived. Of those two, one has a striking

[1] Arts. 19-32 (*ibid.*, pp. 357, 358).
[2] *Ibid.*, pp. 359-363.
[3] *Ibid.*, p. 361.
[4] *Ibid.*, p. 363.

correspondence with that sentence[1] of the prologue to Egbert's 'Penitential,' which (as I suppose) led the compiler of the Exeter 'Penitential' book, now in the Bodleian Library, to interpolate, between the prologue and the body of Egbert's work, the Andain 'Sacerdotal Laws.'

*Art.* 19[2] relates to the duty of 'mass-priests, and all God's servants, to officiate in their churches with holy service, and to sing the seven canonical hours therein'—the hours being enumerated. (This corresponds in substance with the *second* Andain article.)

*Art.* 20[3] enjoins prayers 'for the king and for their bishop, and for those who do good to them, and for all Christian people' (corresponding in substance, as to the king and the bishop, with the seventh and eighth Andain articles).

*Art.* 21[4] corresponds with the passage in Egbert's prologue, as to the *arms*, which 'he who desires to receive the sacerdotal authority,' should 'prepare before the bishop's hand touches his head':

'*He shall also have for the spiritual work, before he is ordained, these weapons:* psalter, epistle-book, gospel-book, and mass-book, book of canticles, and manual, numeral, and pastoral, penitential, and reading book. These books the mass-priest should necessarily have, and he may not be without them, if he will properly observe his order, and rightly inform the people who look to him; and let him be careful that they are well directed.'

*Art.* 22[5] relates to mass-vestments, and sacred vessels, etc. (There is nothing corresponding to this in the 'Sacerdotal Laws.')

*Art.* 23[6] (as to preaching on the Lord's Day and holi-

[1] *Ante*, pp. 239, 240.
[2] Thorpe's *Ancient Laws*, vol. ii. p. 351.
[3] *Ibid.*
[4] *Ibid.*; and see *ante*, p. 239.
[5] Thorpe's *Ancient Laws*, vol. ii. p. 351.
[6] *Ibid.*, pp. 351, 352.

days, and teaching the Lord's Prayer and the Creed), corresponds, in substance, with the third and sixth Andain articles; adding texts from Scripture.

*Art.* 24[1] is that as to tithes:

'The holy fathers appointed also, that men pay their tithes unto God's church. And let the priest go thither and divide them into three; one part for the repair of the church, and the second for the poor, the third for God's servants who attend the church.'

This corresponds, both in substance and in the order of the prescribed division, with the fourth and fifth Andain articles; but it is shorter, and omits the mention of *witnesses.*

*Art.* 25[2] (against celebrating mass in unconsecrated houses) corresponds with the ninth Andain article; introducing an exception for cases of great need or sickness, which is not there.

*Art.* 26[3] (as to the baptism of children suddenly brought to a mass-priest), corresponds, in substance, with the eleventh Andain article.

*Art.* 27,[4] against the receipt of money by a priest for holy offices, agrees closely with the twelfth Andain article. It is in these words:

'And that no priest do his holy ministry for money, nor demand anything, neither for baptism nor for any ministry; that he be not like to those whom Christ himself drove with a

[1] Thorpe's *Ancient Laws*, vol. ii. p. 353. [2] *Ibid.* [3] *Ibid.*

[4] *Ibid.* The words of the twelfth Andain article are: '*Ut nullus presbyter sacrum officium, sive baptismale sacramentum, aut aliquid bonorum spiritualium, pro aliquo pretio vendere præsumat, ne vendentes et ementes in templo columbas imitentur; ut pro his quæ adepti sunt gratia divina non pretia concupiscant terrena, sed solam regni coelestis gloriam promereantur accipere.*'

whip from the temple, because they wickedly trafficked therein. Let not the servant of God do God's ministry for money, but to the end that he may merit eternal glory thereby.'

*Art.* 28[1] also corresponds, almost verbally, with the thirteenth Andain article:

'Nor let any priest, for any covetousness, go from one minster to another; but ever remain in that to which he was ordained, as long as his days continue.'

*Art.* 29,[2] forbidding any priest to drink immoderately, or to force any man to much drink, corresponds exactly with the fourteenth Andain article. It adds reasons for the prohibition, which are not there.

*Art.* 30[3] begins with interdicting priests from some secular occupations (this is not in the 'Sacerdotal Laws'); and it then proceeds, deviating but little from the words of the seventeenth, eighteenth, and nineteenth Andain articles:

'Nor let him wear weapons, nor work strife; nor let him drink at wine houses, as secular men do; nor let him swear oaths, but, with simplicity, ever speak truly as a learned servant of God.'

[1] Thorpe's *Ancient Laws*, vol. ii. p. 353. The words of the thirteenth Andain article are: '*Ut nullus presbyter a sede propriâ sanctæ ecclesiæ, sub cujus titulo ordinatus fuit, ammonitionis*' [the Metz MS. reads here, *ambitionis*] '*causa ad alienam pergat ecclesiam; sed in eadem devotus usque ad vitæ permaneat exitum.*'

[2] *Ibid.* The fourteenth Andain article is: '*Ut nullus ex sacerdotum numero ebrietatis vitium nutriat, nec alios cogat per suam jussionem inebriari.*'

[3] *Ibid.*, p. 355. The three corresponding Andain articles are: (17), '*Nemo ex sacerdotum numero arma pugnantium unquam portet nec litem contra proximum ullam excitet*'; (18), '*Ut nullus presbyter edendi vel bibendi causa ingrediatur in tabernis*'; (19), '*Ut nullus sacerdos quicquam cum juramento juret, sed simpliciter cum puritate et veritate omnia dicat.*'

*Art.* 31 [1] relates to hearing confession, and giving the Holy Communion to the sick; corresponding, in substance, with the twentieth Andain article; but adding a caution, which is not there.

*Art.* 32,[2] as to unction with hallowed oil, corresponds, in its first sentence, with the twenty-first Andain article; to which it adds the words of St. James on that subject, and other matter arising out of them.

There can be no mistake as to the source from which Aelfric derived his precept for the division of tithes. He must have been well acquainted, either with the Worcester 'Excerptions' (now in the library of Corpus Christi College, Cambridge), or with the same Gallican literature of which the compiler of those 'Excerptions' made use: for he made that translation of Theodulph's *Capitula* into Anglo-Saxon, which has been published by Mr. Thorpe under the title of *Ecclesiastical Institutes.*[3] Neither that precept as to tithes, nor anything else in his 'Canons,' was authoritative; it was (if I may borrow the appropriate phrase of Bishop Stubbs [4]), 'a tentative recommendation.' No doubt, Aelfric wished the Bishop of Sherborne to bring into use in his diocese, so far as he could, the rule, as to tithes, of the *Capitulare Episcoporum.* But that could not be done compulsorily, any more than the secular clergy could be compelled to put away their wives, which Aelfric also desired. And it is remarkable (as has been already said) that no similar precept is found in the other pastoral epistle of the same author, written for or addressed to Archbishop Wulstan.

[1] Thorpe, *Ancient Laws*, vol. ii. p. 355. [2] *Ibid.*

[3] *Ibid.*, pp. 394-443. And see Johnson's *Laws and Canons* ('Theodulf's Capitula'), vol. i., ed. 1850, pp. 450-479; see preface, p. 450, and editor's note, p. 452.

[4] *Letter to a Rural Dean of the Diocese of Chester* (12th December 1885).

## § 4. *Gloss on Dunstan's Canons.*

I referred, in a former chapter, to a gloss of King Ethelred's time on that article of Archbishop Dunstan's Canons, which directed the priests 'to so distribute the people's alms, that they do both give pleasure to God, and accustom the people to alms.' The gloss,[1] in these words, recommended a tripartite distribution :—

'And it is right, that one part be delivered to the priests, a second part for the need of the Church, a third part for the poor.'

This is found in a manuscript copy of Dunstan's Canons, considered by Mr. Thorpe to be of the tenth century,[2] but which could not be so early. For another gloss [3] upon the sixtieth canon of that series, which follows shortly afterwards, is evidently taken from the twenty-eighth and two succeeding articles of the document called *Church-Grith*, [4]

[1] Thorpe, *Ancient Laws*, vol. ii. pp. 256, 257, note 4.

[2] A Bodleian manuscript (Junius, 121), which Mr. Thorpe distinguishes by the letter X. (See his list of MSS. in *Ancient Laws*, vol. i. xxvi.—between the Preface and the Table of Contents.)

[3] Thorpe, *Ancient Laws*, vol. ii. pp. 256, 257, note 8. It is in these words: 'And it is right, if a minister of the altar direct his own life by the instruction of books, then he be worthy of full thaneship, both in life and in the grave: if he misdirect his life, let his dignity wane, according as the deed may be; let him know if he will, that neither women nor temporal warfare are befitting him, if he will rightly obey God, and rightly observe God's law. Dunstan decided that a mass-priest, if he had a wife, was entitled to no other *lad* than belonged to a layman of equal birth, if he were charged with an accusation. And it is right, if a minister of the altar conduct himself rightly, then he be entitled to full *wer* and worship.'

[4] *Ibid.*, vol. i. p. 347: '§ 28. If a servant of the altar, by the instruction of books, his own life rightly order, then let him be entitled to the full *wer* and dignity of a thane, both in life and in the grave.

certainly not earlier than A.D. 1014. And it refers to a 'decision' of Dunstan, that a married mass-priest was, for the purpose of 'purgation' when he was charged with a crime, to be treated as a layman.

Whoever this commentator upon Dunstan's Canons may have been, he belonged, doubtless, to Aelfric's school; and he would have applied a rule of distribution, similar to that of the Andain 'Sacerdotal Laws,' not to tithes only (as was proposed in *Church-Grith*), but to the voluntary offerings of the people, made at the altars of the Church or to its ministers or to religious houses.

### § 5. *Bishop Leofric's Rule for Secular Canons.*

There is, in the library of Corpus Christi College,[1] Cambridge, a manuscript book, on the inner fly-leaf of which are these words, in a modern hand:

'This book appears to have been first written in Latin by Theodore, seventh Archbishop of Canterbury, and translated into English by Aelfric, and contains 170 pages' (*Hic liber videtur esse scriptus primo Latine, per Theodorum Archiepiscopum septimum Cantuariensem, et per Aelfricum translatus Anglice, et continet paginas* 170.)

Whelock[2] (referring, doubtless, to that note on the fly-leaf) quoted the seventy-third article of the text of this book (which is, in fact, the rule of the 'Sacerdotal Laws' as to the

§ 29. And if he misorder his life, let his honour wane, according as the deed may be. § 30. Let him know, if he will, that it befits him not to have any concern, either with women or with temporal war, if he desire uprightly to obey God, and observe God's laws, as is properly becoming to his order.' (See Appendix E.)

[1] 3, 12 of Wanley's *Antiquæ Literaturæ Septentrionalis liber.* (p. 130). No. 191 of Nasmith's *Catalogus*, etc.

[2] Bede, *Eccles. Hist.* (Cambridge 1644), p. 358, note.

partition of tithes), as 'a canon ascribed to Theodore of Canterbury.' The manuscript is stated, by both Wanley[1] and Nasmith, to have belonged to the church of Exeter, and to have been written about the time of the Norman Conquest. Wanley described it as containing 'a collection, if it may be so called, of ecclesiastical canons, in Latin and Saxon,' with a preface (which he transcribed); and he added, after giving the Saxon titles of the chapters:

'It is clear, from the rubrics of these canons, that the volume contains, not (as some learned men represent) the canons of the Nicene Council translated by Archbishop Theodore into Latin, and afterwards into Saxon by Aelfric; but a sort of rule, patched up (*consarcinatam*) out of the Benedictine rule, for the use of priests (*presbyterorum et sacerdotum*).'

Nasmith[2] repeated what Wanley had said.

No learned man, who even looked at this document, could have supposed it to contain a translation of canons of the Nicene Council. That Council is not mentioned at all, except in a marginal rubric to the opening words of the preface, in which it is said, that the work would have been unnecessary, 'if the authority of the 318 holy fathers, and of the rest, had always remained inviolate;'—which the rubric rightly interprets of 'the canons of the Nicene Council, where there were 318 bishops.' It need hardly be added, that the connection of this work with the name of Theodore is an anachronism, still more gross than that which connected the 'Excerptions' with that of Egbert. For supposing the Anglo-Saxon version (which in the manuscript follows the Latin of each article) to have been from the hand of Aelfric, there is no authority. It is not so much, even, as a probable conjecture.

[1] *Antiq. Literat. Septentr. lib.*, p. 130. [2] *Catalogus*, etc., No. 91.

I will describe the contents of the manuscript, before suggesting anything as to its history.

It is introduced by a preface, written as by a bishop in a tone of authority, of which the following is the material part:

'If the authority of the canons of the 318 and the rest of he holy fathers always remained inviolate, and the bishops and clergy lived according to that rule of rectitude, it might seem superfluous for us, small as we are, to treat again or say anything new of this matter, which has been in such good order set forth (*rem tam ordinate dispositam*). But since, in these times, the negligence both of pastors and of those under them has too much increased, what else can be done by us, who live in so grave a condition of things, except to bring back our clergy, God giving us grace (*Deo inspirante*), to the line of rectitude, if not so much as we ought, at least as much as we can? Therefore, sustained by the Divine help, let us endeavour to make a small decree (*adgrediamur parvum decretulum facere*), by means whereof the clergy may restrain themselves from what is unlawful, and lay aside what is idle (*otiosa deponat*), and forsake those evils which have too long and too widely prevailed, for His love, who according to the Gospel has redeemed them by His own holy and precious blood. Let us therefore, with watchful care, study to put together a form of instruction which shall plainly set forth how prelates (*prælati*) ought to live and govern those under them, and to constrain them in the Lord's service, and to stimulate to still better things those who do well, and to correct the refractory and the negligent, so far as this Rule of Life can do so (*quatenus formula hæc vivendi spectat*).'

The 'Rule of Life' follows, in a code of eighty-five articles; to each of which a rubric, by way of title or 'argument,' is prefixed. The 'Rule' is for a college of canons of secular clergy;—regulating their morals, subordination, and discipline; their assemblies, officers, and duties; their prayers and church-services, reading and singing; their school teaching and pastoral service; their almsgiving to

the poor; the employment of their time; their stipends, meals, dress, dormitory. Canons (*canonici*), or clerks (*clerici*), is their designation throughout. There is an article (the fifty-first) expressly forbidding them to wear the cowls of monks (*ut canonici cucullas monachorum non induant*).

To the sixty first articles, which thus regulate the conventual or collegiate life, are added twenty-five more, concerning duties of clerks and priests, not distinctly cœnobitic; among which is the seventy-third article, relating to the division of tithes. To understand its practical operation in this code, the forty-third, regulating the alms-giving of the chapter, should be stated.

'It is needful' (says that article), 'that the prelates of the Church (*prælati ecclesiæ*), following the examples of the fathers who have gone before us, prepare a place of reception (*aliquod receptaculum*) where poor persons may be gathered together, and appoint out of the goods of the Church as much as will enable them to meet, as far as they possibly can, the necessary expenses—the tithes being excepted which are thereunto contributed from the townships belonging to the Church (*exceptis decimis, quæ de ecclesiæ villis ibidem conferantur*). The canons also themselves should most willingly contribute to the same hospital (*hospitale*), for the use of the poor, tithes both of the fruits of their land and from all offerings of alms made to them. And let a brother of good report be appointed to entertain strangers and foreigners (*hospites et peregrinos*), regarding them as Christ Himself; and let him willingly minister to them all those things which are needful. And moreover, let no one by any means convert to his own uses those things which ought to go to the uses of the poor.' [The washing of the feet of the poor in Lent is then enjoined.]

The article as to the division of tithes[1] is (with the

[1] Art. 73, *de decimis dividendis.*—'*Sacerdotes populi suscipiant decimas, et nomina corum quicunque dederint scripta habeant super altare. Et ipsas decimas secundum auctoritatem canonicam coram*

following qualifications) a literal copy of that in the *Capitulare Episcoporum*:—(1) It directs the scroll, containing the names of those who have paid tithes, to be kept upon (or over) the altar of the church (*super altare*); (2) it repeats expressly, as the subject governed by the verb *divide*, the words 'the same tithes' (*ipsas decimas*), where the Gallican text implies them; and (3) instead of directing (as the Gallican text does) the distribution to be made by the priests' own hands, it says that this is to be done by the hands of 'faithful men' (*per manus fidelium*).

Only one of the remaining twelve articles of the 'Rule' requires notice — the seventy-sixth — which is an extract from the ninth article of the capitulars of Aix-la-Chapelle[1] of A.D. 816 (repeated in the capitulars of Charles the Bald of A.D. 869), against the appointment of priests to, or their expulsion from, churches, without the authority or consent of their bishops.

This description of the manuscript, together with its date (about the time of the Conquest), and the place from which it came—the cathedral church of Exeter—seems to point irresistibly to the conclusion, that it was drawn up by Bishop Leofric, who then governed that cathedral church (first erected by and under him into an episcopal see), for the regulation of the college of secular canons which he founded and placed there. He himself came, as William of Malmesbury[2] tells us, from Lorraine—'*apud Lotharingos altus et doctus.*' By the same historian we are told, that he 'expelled the nuns (*sanctimoniales*) from

*testibus dividant; et ad ornamentum ecclesiæ primam eligant partem; secundam autem per manus fidelium ad usum pauperum atque peregrinorum misericorditer cum omni humilitate dispensent: tertiam vero partem sibimet ipsis soli sacerdotes reservent.'*

[1] *Ante*, p. 85.

[2] *De Gestis Pontificum*, lib. ii. (ed. 1596), fol. 145 (cited in Dugdale's *Monast.*, vol. ii. p. 514; Caley, Ellis, and Bandinel's edition).

the monastery of St. Peter, and placed there canons, who after the manner of the Lotharingians, but contrary to that of the English, were to eat at one table, and sleep in one chamber' (*canonicos statuit, qui contra morem Anglorum, ad formam Lotharingorum, uno triclinio comederent, uno cubiculo cubitarent*). Malmesbury adds, that, although the rule so given by Leofric to his chapter descended to posterity, much of it had, in his own time, through the increase of luxury, fallen into disuse.

That Bishop Leofric—educated in Lorraine, in the chief city of which province, Metz, the *Capitulare Episcoporum* was well known, and the donor[1] to the library of his church of the Penitential volume (now in the Bodleian Library) which contained, as we have seen, the Andain text of that document—should have given his Chapter (in this, and in some other[2] respects) a precept borrowed from the Gallican Churches with which he was most familiar, is easily understood. As founder of that chapter, he could give its members such lawful statutes or rules as he pleased. The practical acceptance of the tripartite division elsewhere in England is no more proved by the place which it found in such a rule, than the acceptance here of the Roman rule of quadripartite division, in the twelfth century, is proved by the fact that, in A.D. 1186, Pope Urban III.[3] directed Baldwin, Archbishop of Canterbury, to divide the offerings made at the shrine of St. Thomas of Canterbury into four parts; one for 'the monks,' one for the 'fabrics of the Church,' one for 'the poor,' and one for such good uses as the archbishop in his discretion should think fit.

[1] *Ante*, p. 235.

[2] The articles of the Rule as to meals and the dormitory are consistent with what is said of them by Malmesbury. (See Appendix G.)

[3] Matthew Paris, *Hist. Major.*, vol. ii. p. 325 (Luard's ed. 1874).

## CHAPTER IX

### FOURTH PERIOD—LEGISLATION OF ETHELRED THE UNREADY, AND CANUTE

### § 1. *Ancient Latin Collections of Anglo-Saxon Laws*

THE distraction and incoherence of the civil polity during the latter part of Ethelred's unhappy reign left its impress upon the public documents of that time.

Bromton [1] (whatever may be his defects in other respects as a historian) did posterity the good service of collecting to the best of his power the laws of Ina, Alfred, Edward the Elder, Athelstan, Edmund, Edgar, Ethelred the Unready, and Canute. He knew no laws of the reign of Ethelred, except those of Woodstock [2] and Wantage,[3] the treaty [4] with the Norwegian kings Anlaf, Justin, and Guthmund (all purely secular), and the Ordinances of Habam,[5] which he only preserved.

An earlier collection of the Anglo-Saxon laws, translated into Latin in the twelfth century,[6] of which Bromton

[1] Gale, *Script. XX.*, pp. 759, 819 *et seq.*, 835, 839, 847-851, 858-860, 893-901, 914. [2] Thorpe's *Ancient Laws*, vol. i. p. 280.
[3] *Ibid.*, p. 293. [4] *Ibid.*, p. 285. [5] *Ibid.*, p. 336.
[6] *Ibid.*, vol. ii. pp. 447-545, and see vol. i., preface, p. xvi. They are printed by Mr. Thorpe from the Cottonian manuscript 'Tiberius, A. 27,' which he describes (*ibid.*, p. xxvi.) as 'of the thirteenth century, containing perhaps the best text extant of the old Latin version of the Saxon laws.'

may be presumed to have made use (though by giving the Habam Ordinances he has shown that he had also access to other materials), contains (with that exception) the same laws which are in Bromton.

The Latin translators, therefore, if they were acquainted (as is probable) with the documents omitted in both collections, but classed by more modern compilers among the public acts of King Ethelred's reign, did not regard them as possessing that character in any such sense as to make it fit that they should find a place in a code of Anglo-Saxon laws; and it may be inferred, that they found no such place in any records of a public nature to which those translators had access.

### § 2. *Ordinances of Habam.*

The date of the 'Habam' Ordinances[1] is uncertain, but they belong to a time of distress from the invasions of the pagan Danes; for remedy of which they enjoin special religious observances, as long as the necessity should continue (*quamdiu necessitas ista nobis est in manibus*).[2] The only provision in them which requires notice is one as to tithes and other church dues,[3] which, disregarding the rights conceded by King Edgar's laws to manorial churches with burial-grounds, directed them all to be paid to the 'nearest mother-churches.'

'And we enjoin that every man, for the love of God and all the saints, give church-scot and his rightful tithe (*rectam decimam suam*) as it stood in the days of our ancestors when it stood best: that is, as the plough shall traverse the tenth acre. And let everything customarily due (*omnis consuetudo*) be rendered, for God's sake (*propter amicitiam Dei*), to our

[1] Thorpe's *Ancient Laws*, vol. i. p. 336.
[2] *Ibid.*, p. 338 (art. 3). [3] *Ibid.* (art. 4).

nearest mother-church (*ad matrem nostram ecclesiam cui adjacet*). And let no one take away from God what belongs to God, and by our predecessors has been granted.'

### § 3. *Council of Enham, and Ordinance of* A.D. 1008.

It now becomes necessary to speak of the first two of four documents, classified by Mr. Thorpe among 'the laws of King Ethelred,' which are not found in the Latin translations. Of these, one contains the Acts or decrees of an ecclesiastical council held at Enham (or Eanham),[1] and the other an ordinance[2] of the king and his witenagemot, evidently founded on those Acts. Both are in the main ecclesiastical, though they contain some provisions relative to the defence of the realm. They go into detailed regulations as to morals, discipline, and religious observances, etc., in a manner until then without example (even after the treaty between Edward the Elder and Guthrum the Dane), in Anglo-Saxon legislation.

Of the circumstances under which the Council of Enham was held[3] our only information is derived from a Latin preamble[4] to a manuscript copy of its 'synodical decrees' (as they are there called), which is in the Cottonian collection:[5]

'It came to pass at a certain time that, under an edict of King Ethelred, and by the advice of the two archbishops,

[1] Thorpe's *Ancient Laws*, vol. i. p. 314. (This place is supposed to be Ensham in Oxfordshire.) [2] *Ibid.*, p. 304.

[3] See Hook, *Lives of Archbishops*, vol. i. p. 465.

[4] Mr. Thorpe (*Ancient Laws*, vol. i. p. 315), printing the Acts of the council from the Cambridge MS. (No. 201 of Nasmith; S. 18 of Wanley), omits this preamble.

[5] 'Claudius, A. 3,' a MS., according to Mr. Thorpe, of about the period of the Conquest. Selden quotes the preamble, describing the assembly as 'a council, or kind of parliament, held under King Ethelred' (*Hist. of Tithes*, ch. 8, § 10, ed. 1618, p. 220).

Alphege and Wulfstan, all the great men of the English (*universi Anglorum optimates*) were called together to meet on the holy day of Pentecost, at a place called by its inhabitants Eanham. An assembly of very many reverend servants of Christ being there collected, they reasoned and held discourse, as if divinely inspired, of many things concerning the recovery of the worship of the Catholic religion, and also for the amendment and furtherance of the state of the commonwealth' (*de Catholicæ cultu religionis recuperando deque etiam rei statu publicæ reparando vel consulendo*).

The 'synodical decrees' of this council do not purport to be enactments of a civil legislature; and, it is clear, as a matter of fact, that they were not. Their title, in the Parker manuscript, from which Mr. Thorpe's text is taken, is 'Ordinances of the Witan'; but even that title (not mentioning the king) repels, as far as it goes, the idea of a proper legislative enactment: and the word 'witan' might be used of the wise men of the church alone. That it was so used in this place, is clear from the introductory words of the first article[1]:—'These are the ordinances which *the councillors* of the English selected and decreed, and strictly enjoined that they should be observed,' after which the article proceeds:

'And this then is first, the primary ordinance *of the bishops*: that we all diligently turn from sins, as far as we can do so, and diligently confess our misdeeds, and strictly make *bot* (amends), and rightly love and worship one God, and unanimously hold one Christianity, and diligently eschew every heathenism, diligently promote prayer among us, and diligently love peace and concord, and faithfully obey one royal lord, and diligently support him with right fidelity.'

The Council of Enham, being held under Alphege as primate (whose predecessor in the see of Canterbury died

[1] Thorpe's *Ancient Laws*, vol. i. p. 315.

on the 16th November A.D. 1006,[1] and who went in the next year to Rome for his pall,[2] and returned), could not be earlier than A.D. 1008; which is the Latin date (in the same volume[3] of the Parker manuscripts which contains the Acts of the council, and also in a volume[4] of the Cottonian collection, different from that which contains the 'synodical decrees') of the civil ordinance, by which some of those synodical decrees (altogether fifty-three in number) were adopted and ratified; others being amended, and some disallowed, or omitted as unnecessary. The Anglo-Saxon title of the civil 'ordinance'[5] is:

'This is the ordinance that the king of the English and both the ecclesiastical and lay witan have chosen and advised.'

The points of agreement prove the relation of the Acts of the two assemblies to each other. The points of difference, as well as the fact that the Acts of both assemblies are preserved as distinct from each other in the same volume of the Parker manuscripts, prove that neither document is a corrupted or imperfect copy of the other. It is probable, that both assemblies may have been held about the same time (perhaps at the same place), the royal witenagemot succeeding the ecclesiastical synod.

On comparing the civil ordinance with the 'synodical decrees,' we find that, of the latter, twenty-six[6] were adopted and enacted, not in substance only, but for the most part

[1] Hook, *Lives of Archbishops*, vol. i. p. 454. (Archbishop Alphege fell into the hands of the Danes at Canterbury, A.D. 1011, and was murdered by them in the following year.)

[2] *Ibid.*, p. 463. [3] No. 201 of Nasmith; S. 18 of Wanley.

[4] 'Nero, A. I.' (Mr. Thorpe's print is from this MS.)

[5] Thorpe, *Ancient Laws*, vol. i. p. 304.

[6] Those numbered (by Mr. Thorpe) 1 to 4 inclusive, 6, 8 to 11 inclusive, 13, 15 to 21 inclusive, 24, 26, 30, 31, 33, 35, 37, 38, 40.

literally, and with little change of order, by the king and his witenagemot; that seven[1] more were adopted, with omissions or variations in the nature of amendments; that fifteen[2] were retrenched (probably as being didactic or superfluous), four articles in general terms of a like nature being substituted for them at the end of the civil ordinance; and that five[3] were disallowed, one of which had ordered the observance of ember-days and fasts, 'so as St. Gregory himself prescribed to the English nation.'[4] For this, the national witenagemot (either to do honour to the memory of Ethelred's murdered brother and predecessor, or perhaps from some apprehension[5] that judgments might have fallen upon the realm on account of that murder), substituted an article in these words[6]:—

'And the *witan* have chosen that St. Edward's mass-day shall be celebrated over all England on the XV Kal. April.'

[1] Arts. 5, 22, 25, 27, 28, 32, 36.

[2] Arts. 14, 29, 41 to 53 inclusive.

[3] Arts. 7, 12, 23, 34, 39. (They relate to the banishment of witches, etc., to prohibited marriages, to St. Gregory's rule as to fasts and festivals, to penalties for injuring ships of war, and to outrages against nuns and widows. Some of them were afterwards enacted by Canute.)

[4] Art. 23 (Thorpe, *Ancient Laws*, vol. i. p. 321).

[5] Stow (A.D. 978), following older chroniclers, says of Ethelred: 'Because he came to the kingdom by wicked means, and by killing his brother, he could never get the good-will of the people.' Gervase of Canterbury (Stubbs' ed., vol. ii. p. 52) says: 'He besieged rather than governed the kingdom for thirty-seven years. The course of his life began with cruelty, continued in misery, ended in disgrace. St. Dunstan, when unwillingly he put the crown upon his head, had foretold the evils which would come upon him and upon the whole kingdom.' Other chroniclers fill up the tradition with the words of Dunstan, predicting judgments upon him because he had profited by his brother's murder; though guilty of it he certainly was not.

[6] Thorpe, *Ancient Laws*, vol. i. p. 309 (art. 16).

The only parts of these documents which (with reference to my general subject) I think it necessary to mention, are two articles[1] of the civil ordinance, as to church dues and tithes, corresponding exactly with six[2] of the 'synodical decrees.' As to tithes, they merely provided that 'a tithe of young by Pentecost, and of earth-fruits by All-Hallows' mass,' should be 'willingly paid every year.' As to the other dues, the only thing worthy of note is, that burial-fees (*soul-scot*) were ordered[3] to be paid 'to the minster' to which the corpse belonged, when an interment might take place out of 'its proper shrift-district.'

The monastic mind[4] is apparent in these 'decrees,' and in the provisions of the 'ordinance' which followed them. Whether from the disorders of the time, or from some constitutional objection to the manner in which the proceedings had been conducted, the fact appears to be, that they failed to take effect as laws. The party in whose interest they had been conceived considered their ratification, by re-enactment,[5] necessary within a very few years afterwards; and in one of the documents[6] which had that object in view there is an imputation of irregularity cast upon King Ethelred's

[1] Arts. 11, 12 (*ibid.*, pp. 307-309).

[2] Arts. 16-21 inclusive (*ibid.*, pp. 319-321).

[3] 'Ordinance,' art. 12 (*ibid.*, p. 309).

[4] See arts. 4 to 9 inclusive, of the civil ordinance (Thorpe, *Ancient Laws*, vol. i. pp. 304-307) corresponding with arts. 2 to 5 inclusive, of the synodical decrees (*ibid.*, pp. 314-317).

[5] See *Of Grith and of Mund* (*ibid.*, pp. 331-337), and *Of Church-Grith* (*ibid.*, 341-351), particularly articles 1, 9 to 13 inclusive, 17, 28, 30, 31, and 44 of *Church-Grith*. The greater number of them were afterwards incorporated into Canute's laws (see his Ecclesiastical Laws, arts. 1, 2, 5, 6, 8, 9, 12 to 17 inclusive, 19, 21, 24; Secular Laws, arts. 3, 5, 10, 36, 37, 51, 66, 74—Thorpe, *Ancient Laws*, vol. i. pp. 358-425).

[6] *Of Church-Grith*, arts. 37, 38 (*ibid.*, p. 349).

witenagemots, which does not seem applicable to the laws of Woodstock or Wantage, but may, perhaps, have reference to the separation, in A.D. 1008, of the national witenagemot from the ecclesiastical synod. 'In those gemots' (it is said), 'though deliberately held in places of note after Edgar's lifetime, the laws of Christ waned, and the king's laws were impaired; and then was separated what was before in common to Christ and the king in secular government; and it has ever been the worse, before God and before the world.'

### § 4. *Ethelred's supposed law for Partition of Tithes.*

Mr. Thorpe has classified, among 'the laws of King Ethelred,' two other documents, of which he has given (I cannot say translated) the titles as found in the Anglo-Saxon texts:—*Of Grith and of Mund*,[1] and *Of Church-Grith*.'[2] '*Grith*' means *peace* or *privilege;* such as that of a sanctuary or other privileged place or person. '*Mund*' is explained as *protection*, *guardianship*, and also as the price or penalty for the violation of a privileged person or thing.

The former of these documents[3] contains nothing about tithes or ecclesiastical organisation; it is a short collection of English, Kentish, South-Anglian, North-Anglian, and other laws, relative to the privileges of churches, etc.; which, in the thirteen last articles,[4] is followed by a wail of lamentation over the prevailing neglect of bishops and their precepts, and the hypocrisy of those who, making a formal profession of religion, and of reverence for priests,

[1] Thorpe, *Ancient Laws*, vol. i. p. 330.
[2] *Ibid.*, p. 340.
[3] *Ibid.*, p. 330.
[4] Arts. 19-31 (*ibid.*, pp. 333-339).

'plunder the Church, and corrupt or impair that which to the Church belongs,' and 'injure or revile (the clergy) by word or deed.' There is in it no pretension to, or indication of, legislative form or matter; and it is difficult to understand on what ground it could have been supposed by any one to be a law. I mention it only because its matter and character, its juxtaposition in the manuscripts[1] with the succeeding document entitled *Church-Grith*, and a remarkable sentence[2] which is found in both, suggest that those two documents may have had the same origin and a common purpose.

The document called *Of Church-Grith* was either a collection (as the late Mr. Price,[3] an eminent Anglo-Saxon scholar, thought it) of the same character with *Of Grith and of Mund*, or it was a draft or project of laws, which the framer—evidently an ecclesiastic of Aelfric's school—wished to have enacted. If the former was its true character, some things contained in it, especially the article as to a tripartite division of tithes, must have been of the same spurious quality with other monastic fabrications, of which, from the time of the false Isidore, there had been too many. If the latter (as I should myself rather conclude, from the relation which the contents of this document bear to the legislation of Canute), then the question is, when,

[1] The Cottonian MS., 'Nero A. 1'; and the Parker MS., No. 201, Nasmith; S. 18, Wanley.

[2] Opening of art. 24 in *Grith and Mund*: 'And wise were also in former days those secular witan, who first added secular laws to the just divine laws, for bishops and consecrated bodies;' and of art. 36 in *Church-Grith*: 'And wise were those secular witan, who to the divine laws of right added secular laws for the people's government."

[3] See Mr. Price's letter (26th June 1832) to Archdeacon Hale, in Hale's *Essay on Church-rates*, App., pp. 49-51. (As to Mr. Price, see preface to Thorpe's *Ancient Laws*, vol. i. p. xvii.)

and how far, and by what authority (if at all), the matter embodied in that project, or any part of it, became law?

In its first and sixth articles (the latter being that which was intended to enjoin a tripartite division of tithes) it speaks, beyond doubt, the language, either of past or of present national legislation. The first[1] article (which relates to the privileges of churches) is introduced with the words:

'This is *one*[2] *of* the ordinances which the king of the English composed with the counsel of his witan.'

The sixth article I give, with three more which succeed it; all relating to tithes.[3]

§ 6. 'And respecting tithe—the king and his witan have chosen and decreed, as is just, that one third part of the tithe which belongs to the church go to the reparation of the church, and a second part to the servants of God, the third to God's poor and to needy ones in thraldom.

§ 7. 'And be it known to every Christian man that he pay to his Lord his tithe justly, always as the plough traverses the tenth field, on peril of God's mercy, and of the full *wite* which King Edgar decreed—that is:

§ 8. If any one will not justly pay the tithe, then let the king's reeve go, and the mass-priest of the minster, or of the *land-rica*,[4] and the bishop's reeve, and take forcibly the tenth part for the minster to which it is due, and assign to him the ninth part; and let the eight parts be divided into two, and let the landlord take possession of half, half the bishop; be it a king's man, be it a thane's.

§ 9. 'And let every tithe of young be paid by Pentecost on pain of the *wite*, and of earth-fruits by the equinox, or at all events by All-Hallow's mass.'

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[1] Thorpe, *Ancient Laws*, vol. i. p. 341.

[2] This form of expression is singular. I do not think that anything exactly like it is to be found elsewhere. [3] *Ibid.*, 343.

[4] Mr. Thorpe explains '*land-rica*' as *the proprietor of the land, lord of the soil.*

On comparing these articles with King Edgar's laws,[1] it will be seen that, if enacted, they would have omitted the clause in those laws which authorised the payment of one-third of the local tithes to a manorial church having a burial-ground; and would have substituted for it a provision (new in Anglo-Saxon legislation) for a tripartite division of tithes, substantially the same with that of the *Capitulare Episcoporum*, though not expressed in exactly the same terms; the chief difference being that, as to one-third, we have here '*the servants of God*,' instead of '*the priests alone*'; a variation which (if it did not indicate), certainly included monks. And the tithes, to be so divided, would have been treated as wholly due to '*the minster*,' which (if this were read with the 'Habam Ordinances') would appear to mean the nearest *Mother-Church*.

That the framer of any project of law should express it in those terms in which it might stand, if adopted and passed by the legislature, is not extraordinary. That form cannot determine the question, whether it was so adopted and passed or not.

The internal evidence of the latter part of the document is strong against the supposition that, in the form in which it there appears, it was, or could have been, enacted as law. Five of its last nine articles are historical, rhetorical, expostulatory, didactic; such as might have been appended, by ecclesiastics dissatisfied with the actual state of things, to proposals of a practical character cast into the shape of laws which they wished to have passed; but such as, if their proposals were wholly or in part adopted, would certainly not be repeated in the law itself. Mr. Freeman, who seems to have accepted[2] the date A.D.

[1] *Ante*, p. 220.

[2] *Norman Conquest*, vol. i. p. 366.

1014 (found, as will presently be stated, in a Latin rubric to one of the manuscripts) as evidence that the document represents some public act of that year, was also led (I presume, by those latter clauses) to the conclusion,[1] that these were 'hardly laws at all,' but mere 'advice,' and 'an expression of pious and patriotic feeling, a promise of national amendment, rather than legislation, strictly so called.'

The document is found in two (I believe only two) manuscripts:—in the Worcester volume ('Nero A. 1') of the Cottonian collection, and in the volume of the Parker collection in the library of Corpus Christi College, Cambridge, numbered 201 by Nasmith, and by Wanley S. 18.

The contents of both those volumes (of the former especially) are miscellaneous in their character. The Saxon portion of the former (of which the Latin part includes some things belonging to the latter half of the twelfth century) is said by Mr. Thorpe to have been 'written apparently in the beginning and middle of the eleventh century'; the Parker volume he describes as 'apparently of the middle of the eleventh century.' It may be asserted, however, without risk of error, that *no part* of either volume was written before the end of Canute's reign, who died in November A.D. 1035; for the Worcester book *begins* with Canute's laws, which are followed by those of Edgar, Alfred, Athelstan, Edmund, Ethelred; and after them *Grith and Mund*, and *Church-Grith*;—all in Anglo-Saxon, without break, and in that order. In the other manuscript, Canute's laws do not come first; but they follow *Church-Grith*.

Selden and Spelman were well acquainted with the Worcester (Cottonian) manuscript; and, as neither of them

[1] See his paper quoted by Rev. Morris Fuller, *Alleged Tripartite Division*, etc., p. 34.

made mention of this *Church-Grith* document, it may be inferred that they did not regard it as having the character or the authority of a law. If Lambarde, Whelock, and John Johnson were acquainted with either manuscript (the contrary supposition is improbable), the inference as to them also, from their silence about it, must be the same. David Wilkins was the first to publish it, in his *Leges Anglo-Saxonica*,[1] where he combined it, in a manner for which the manuscripts afforded no warrant, with the ordinances of 'Habam,' etc. If he had regarded it as an authentic ecclesiastical law when he afterwards (in A.D. 1737) published his great collection of Acts of councils and other English ecclesiastical documents, it must[2] have found a place there; which it does not.

Mr. Thorpe's text is taken from the Worcester (Cottonian) manuscript; which, however, does *not* contain his Latin heading, with the date A.D. 1014 (*'Anno MXIIII ab Incarnatione Domini nostri Jesu Christi'*). There is, indeed, now written in the margin of that manuscript, in a small modern hand (which I believe to be that of Josceline, Archbishop Parker's secretary), the date *'Ao. dom.* 1014'; and this, no doubt, was done upon the authority of the other manuscript, then (if Josceline was the annotator) in Archbishop Parker's possession. The Parker manuscript is, therefore, the only authority for that date. It occurs there (with the figures, as given by Mr. Thorpe, but in other respects with contractions[3] which he has expanded) in a rubric, crowded into the right side of the first lines of

[1] *Leges Anglo-Saxonicæ* (1721), pp. 106, 113.

[2] Canute's Ecclesiastical Laws are in Wilkins's *Concilia*, vol. i., pp. 299-309.

[3] The rubric is in two lines of unequal length, thus:

AN. MXIIII AB. INCARN
DNI NRI IHV XPI.

the text, and therefore written at the same time with those lines—that is, not earlier than the middle of the eleventh century. In transcripts or copies of ancient documents, nothing is more liable to corruption than numerals: and, in this case, an error in a single figure might have made MXVIII pass into MXIIII. I have spoken of the marginal note (which I suppose to be Josceline's) to the Worcester manuscript. There are also two notes, in different hands of the sixteenth or seventeenth century, to the Parker manuscript: one, at the top of the page, '*Leges Aetheldredi*' (*Ethelred's Laws*); the other, in the margin, '*Fragmen. Legis Canuti*' (*A Fragment of Canute's Law*). The former gloss (for Ethelred's name occurs nowhere in the manuscript) was evidently founded on the rubrical date; the latter upon a suspicion of error in the date, not unreasonable (although the idea of the document being a 'fragment' seems to be incorrect) when its relation to the laws of Canute is perceived and considered.

Mr. Price[1] thought, that the date A.D. 1014 was confirmed by the internal evidence of a clause in the document itself; although he did not regard it as a law. The clause[2] is this:

'But let us do as is needful for us; let us take to us for an example that which former secular witan deliberately instituted, —Aethelstan, and Edmund, and Edgar who was last; how they worshipped God, and observed God's law, and rendered God's tribute, the while that they lived. And let us love God with inward heart, and heed God's laws, as well as we best can.'

I fail to see why the words, '*Edgar who was last*,' should be more appropriate to the end of Ethelred's than to the

[1] Letter to Archdeacon Hale (26th June 1832), Hale's *Essay on Church-rates*, App., pp. 49-51.

[2] Art. 43 (Thorpe's *Ancient Laws*, vol. i. p. 351).

beginning of Canute's reign. They could not, in either case, mean that Edgar was the immediate predecessor of the reigning king; for Edgar was not the immediate predecessor of Ethelred; Edward, 'the Martyr,' came between. If (as I think) they mean that Edgar was the last of those kings who were held up by the framer of the document as examples for imitation, that would be no less true at any time before a reform, after the model of those better times, had taken place, than in A.D. 1014. It would be true till Canute had satisfied the desires of those who looked back with regret to the days of Athelstan, and Edmund, and Edgar. That this is the real sense of the words, I think manifest from another clause[1] in the same document, already (for another purpose) referred to. 'But in those gemots, though deliberately held in places of note, after Edgar's lifetime, the laws of Christ waned, and the king's laws were impaired.' And it is further illustrated by a passage in the *Institutes of Polity*,[2] where it is said: 'It has been altogether too much the case, since Edgar ended, that there are more robbers than righteous.'

What, as bearing upon the question whether *Church-Grith* was an enactment of Ethelred in A.D. 1014, which had force and effect as law in England, is the evidence of history? Ethelred had before that year fled the country, and Sweyn, the father of Canute, reigned for a short time in his stead. It is true that at Easter, A.D. 1014, after Sweyn's unexpected death, Ethelred was recalled by his subjects, and returned, promising (a condition on which they insisted) that his government should be reformed. So say all the chroniclers; but not one of them says that the promise was fulfilled. On the contrary, his last days

[1] Art. 37 (Thorpe, *Ancient Laws*, vol. i. p. 349).

[2] *Ibid.*, vol. ii. p. 321.

seem to have been (if possible) worse than the first. He was in circumstances which left him practically without power. Canute never renounced, and never thought of renouncing, the crown which had been his father's. In the war which followed Ethelred's return he found his strength insufficient, without reinforcements; to obtain which he sailed to Denmark; but after a short interval he came back, stronger than ever. When the war was resumed Ethelred was in failing health. In 1016 he died. On his death Canute was accepted as king by the national witenagemot at Southampton, and he carried on the war with varying fortunes during the spring and summer of that year against Edmund Ironside. That war was terminated by an agreement for partition of the kingdom; but on the 30th of November in the same year Edmund died; and from that day Canute reigned throughout England without a competitor.

I find it difficult to suppose that if, during the year after Ethelred's return from Normandy, a national witenagemot had been assembled for the work of legislative reform, it would have been contented with a series of purely ecclesiastical laws and precepts, such as those contained in the document under consideration; or that, if Ethelred had in that way redeemed his promise to govern better than before, every chronicler who mentions that promise would have been silent about it; or that the laws of Edgar, the restoration of which in A.D. 1018 was one of Canute's first acts,[1] should have been still disregarded until that time. But if the mention of the 'king and witan' in *Church-Grith*, together with the rubrical date of the Parker manuscript, should seem to any one sufficient to outweigh those improbabilities,

[1] Saxon Chronicle, and Florence (following it), under A.D. 1018.

what was done by Ethelred in A.D. 1014 could not after his death in A.D. 1016 take any practical effect, except so far as it might be recognised as valid or confirmed by Canute; nor under the circumstances of those two miserable years[1] while Ethelred still lived, is it possible that anything so done could have effected a practical change (even during that interval) in the prior usages of the Anglo-Saxon Church. What Canute did,—whether *Church-Grith* represents anything done or proposed to be done in A.D. 1014, or whether it was (as I think more likely) a project of law which the ecclesiastics who called Canute to the throne in 1016 submitted to him, then or afterwards, and desired to have enacted by him,—what he did, proves unequivocally, that, although he conciliated the monastic party by accepting and enacting almost everything which was contained in that document, he did *not* accept, and did *not* enact or confirm, but, on the contrary, set aside and disallowed the article of that document as to a tripartite division of tithes.

## § 5. *Canute's Laws.*

Of all the kings who held sway in England before the Norman Conquest, Alfred and Canute were the most distinguished as legislators: Canute stands even before Alfred, as the author of the more complete, copious, and elaborate code.[2] That work must have been the result of careful deliberation; it was a well-considered endeavour to provide for the good government of his English subjects, and to meet, as far as possible, the reason-

[1] In the same Worcester (Cottonian) manuscript volume which contains *Church-Grith* is a sermon thus described in the table of contents at the beginning of the book: '*Sermo Lupi ad Anglos, quando Dani maxime persecuti sunt eos; quod fuit anno* 1014 *ab Incarnatione Domini nostri Jesu Christi.*'

[2] Thorpe's *Ancient Laws*, vol. i. pp. 358-430.

able wants and wishes of all orders and degrees of men among them. It contains twenty-six ecclesiastical laws, and eighty-four secular (including several on mixed subjects); in addition to which, there were thirty-four forest laws.

There is nothing in Canute's code material to my purpose, except the laws which show its relation to the documents called *Of Grith and of Mund*, and *Of Church-Grith*, and those relating to tithes and repairs of churches. Of the classification of 'minsters,' and 'field-churches,' contained in one of its articles, I have already[1] spoken.

That the document called *Of Grith and of Mund*, was made use of in the preparation of Canute's laws seems evident, from some of the provisions in the second[2] article of the ecclesiastical, and the sixtieth[3] of the secular laws; and also from the opening words of the twenty-sixth[4] article of the ecclesiastical laws, '*Bishops are heralds, and teachers of God's laws*,' which are found in the nineteenth article of *Grith and Mund*.

As to the other document, the state of the case is this. It contains, altogether,[5] forty-four clauses or articles; of which five[6] are of that historical, rhetorical, expostulatory, and didactic character of which I have spoken as not proper for laws which could, in that or any similar form, be enacted by any legislature. These do not appear in Canute's legislation; and one other was omitted,

[1] *Ante*, pp. 222, 223.

[2] 'Then is it very right, that God's *church-grith* within walls, and a Christian king's hand-grith, stand equally inviolate,' *ibid.*, p. 359; compare *Of Grith and of Mund*, art. 2, *ibid.*, p. 331.

[3] *Ibid.*, p. 409; compare *Of Grith and of Mund*, art. 9; *ibid.*, p. 331.

[4] *Ibid.*, p. 375; *G. and M.*, *ibid.*, p. 333.

[5] *Ibid.*, pp. 340-351. [6] Arts. 36 to 39 inclusive, and 43.

apparently as superfluous. There remain thirty-eight of a more positive kind; and of these, thirty-two are found, without alteration, in Canute's laws (twenty-five in the ecclesiastical, seven in the secular), and four more, if not repeated in exactly the same terms, are covered in substance and by necessary implication.[1] Two[2] remain, which were evidently, on consideration, disallowed; one of these is the article for the tripartite division of tithes—of which (I may here add) there is no trace in any later collection or compilation of Anglo-Saxon laws,—not in those which go by the name of Edward the Confessor[3]; not in those ascribed to the Conqueror[4]; not in those called the laws of Henry I.,[5] The other rejected article[6] proposed to give extraordinary aid and protection to abbots and their stewards:

'And the king commands all his reeves, in every place, that ye protect the abbots on all secular occasions, as ye best may; and, as ye desire to have God's or my friendship, that ye aid their stewards everywhere to right; that they themselves may the more uninterruptedly dwell closely in their minsters, and live according to rule.'

Canute did more than *omit* the clause for the tripartite division of tithes. Instead of it, he restored[7] to its proper place in the ecclesiastical part of his code, Edgar's law[8] in favour of manorial churches, with burial-grounds (which the framers of *Church-Grith* had omitted. And by one of his secular laws,[9] 'all men' were required to 'give assistance to *church-bot*,'—that is, to the repair of churches.

[1] See Appendix E.

[2] Arts. 6 and 32. (That as to the partition of tithes is art. 6.)

[3] Thorpe's *Ancient Laws*, vol. i. pp. 442-464. [4] *Ibid.*, pp. 466-496.

[5] *Ibid.*, pp. 497-631. [6] Art. 32 (*ibid.*, p. 347).

[7] Canute's Ecclesiastical Laws, art. 11 (Thorpe's *Ancient Laws*, vol. i. pp. 366, 367).

[8] *Ibid.*, p. 263 (and see *ante*, p. 320). [9] *Ibid.* (p. 411, art. 66).

If we inquire how it happened that, on points such as these, the monastic party failed to obtain the legislation which they desired, the explanation may probably be found in the influence of Ethelnoth, who succeeded to the see of Canterbury in A.D. 1020. He was Canute's intimate friend, 'encouraging him' (in the words of Dean Hook's[1] quotation from William of Malmesbury) 'in his good actions by the authority of his sanctity, and restraining him in his excesses.'

'Although educated at Glastonbury, he was himself a secular, and the predilections of Canute for the party of the seculars were evinced by his placing the church he erected at Assingdon under the control of a secular priest; but, wherever people desired it, Benedictine monasteries were established, and every facility was afforded to the chapters of cathedrals and larger churches to adopt the Benedictine rule when such was their pleasure. The consequence was that the seculars ceased to be persecuted; and although, in deference to public opinion, the married clergy were not encouraged, they were permitted without molestation to cultivate the domestic virtues until the triumph of celibacy under the Normans.'[2]

I will state, before leaving this subject, my reasons for agreeing with the opinion of Mr. Kemble[3] and Schmid,[4] that Canute's laws ought to be referred, not (as Lappenberg[5] and some others have thought) to the latter, but to the earlier part of his reign. If they belong to the earlier time, the 'Mid-winter' witenagemot of Winchester, at which, according to the Anglo-Saxon title[6] in the Wor-

[1] *Lives of Archbishops*, vol. i. p. 479. [2] *Ibid.*, pp. 480, 481.
[3] *Saxons in England*, vol. ii. p. 259.
[4] *Die Gesetze der Angelsachsen* (Leipsic 1882), preface, p. lv.
[5] *Hist. of England* (Thorpe's transl.), vol. ii. p. 202.
[6] See Thorpe, *Ancient Laws*, vol. i. pp. 358, 359.

cester manuscript, they were passed, may probably have been held between A.D. 1018 and 1021. Those who lean to the contrary opinion suppose them to have been passed after Canute's return from his pilgrimage to Rome; the true date of which (though assigned by the chroniclers to A.D. 1031) cannot be later than 1026.[1]

It is not likely that Canute, whose affairs in the north of Europe required him to be for long intervals absent from England, should have delayed for more than ten years from his accession to the throne a work of legislation, indispensably necessary for the pacification and settlement of his newly-acquired kingdom. It was expected from him by those who, upon the death of Ethelred, chose him for their king. The provisions of his laws generally, and especially the ecclesiastical laws, were founded upon materials ready to his hand. His policy must have been to conciliate, as much and as soon as possible, the goodwill of his new subjects, and to establish a contrast between his firm government and the preceding times of disorder. All these considerations were against unnecessary delay.

Lappenberg[2] gives no reasons for his opinion, that Canute's laws 'do not appear to have been composed in the first years of his reign,' beyond these—(1) that their preamble 'shows them to be posterior to the re-conquest of Norway in 1028;' and (2) that they contain a 'reintroduction of St. Peter's Penny.'

Of the latter reason it is sufficient to say, that the clause in Canute's ecclesiastical laws, which Lappenberg describes as 're-introducing' the *Rom-feoh*, or Peter's

[1] See Lappenberg, *History of England* (Thorpe's transl.), vol. ii. p. 211, note.

[2] *Ibid.*, p. 202.

penny, is taken directly from *Church-Grith*,[1] and could not be due to any special effect on Canute's mind of his visit to Rome. That impost had been recognised, as legally due, in the synodical decrees of Enham,[2] and in the ordinance of A.D. 1008.[3] And Canute's own letter[4] from Rome to the English archbishops and bishops (which, in Lappenberg's view, preceded his legislation) contains, to my mind, evidence to the contrary. He referred in that letter to plough-alms, tithes, Peter's pence, and church-scot (the payment of all which was enjoined by clauses of his code, repeating and confirming older laws), as 'due according to the ancient law to God'; he expressed his desire that none of them should be in arrear when he returned; and he gave notice that if they were not duly paid, the laws concerning them would be strictly enforced by him against defaulters ('*Hæc et his similia, si non erunt persoluta, regia exactio secundum leges* [*in quem culpa cadit*], *districte absque venia comparabit.*')

As for the description of Canute, in the Anglo-Saxon title of the Worcester manuscript, as 'king of all England, and king of the Danes and Norwegians,' it is not to be assumed that, because a later scribe gave him that style, it was found in the original record of his laws. It is not in the Rochester[5] text. Schmid[6] regarded it as an interpolation, on the ground that Canute never used his Danish or Norwegian titles in England. And Lappenberg,[7] when

[1] Art. 10. See Thorpe, *Ancient Laws*, vol. i. p. 343.

[2] *Ibid.*, p. 321. [3] *Ibid.*, p. 309.

[4] See Florence of Worcester, *sub* A.D. 1031, and *post*, pp. 296, 297, note.

[5] *Textus Roffensis* (belonging to the Dean and Chapter of Rochester Cathedral, published by Hearne in A.D. 1720); see fol. 58.

[6] *Die Gesetze der Angelsachsen*, preface, p. lv.

[7] *Hist. of England* (Thorpe's transl.), vol. ii. p. 211, note.

investigating the question of the true date of Canute's letter from Rome,[1] was not embarrassed by a similar difficulty. 'The title assumed by Canute, in his letter, of *Rex Norveganorum et partis Suevorum* may' (he said) 'be a later interpolation.'

[1] The letter in Florence of Worcester (under A.D. 1031) is thus addressed: '*Canutus rex totius Angliæ, et Denemarciæ et Norreganorum, et partis Suavorum, Aethelnotho Metropolitano et Alfrico Eboracensi Archiepiscopo.*'

## CHAPTER X

### FOURTH PERIOD—FINAL SETTLEMENT OF THE PAROCHIAL SYSTEM

#### § 1. *Summary of laws as to Tithes, down to Canute*

THE general effect of the Anglo Saxon laws as to tithes, down to and including those of Canute, may be thus shortly summed up. The obligation of paying prædial tithes was recognised; they were to be paid at certain seasons, according to the nature of the different titheable subjects. Those who did not pay them were liable to penalties; and under Edgar's laws (confirmed and repeated by Canute), they might be taken forcibly, under process of law, from those who withheld them. Until Edgar's time, no law either enjoined, or expressly recognised, any special appropriation of tithes. That appears to have been determined by practice. There was not so much as a canon of the Church which laid down a rule on that subject. If we go so far back as to the precepts of Archbishop Theodore, it seems that, in his view, the ecclesiastical duty would have been satisfied by a gift, either directly to the poor or strangers, or (by laymen) to the giver's 'own church.'

From Edgar's laws, however, it may with reasonable certainty be inferred, that there was a general presumption in favour of the payment of tithes to the 'older minsters,' or 'mother-churches' (monastic, generally, or conventual)—

similar to the public baptismal churches of the Continent. Those laws were the first to introduce an innovation upon that general custom, in favour of churches in private patronage, with burial-grounds belonging to them, within the manors or estates of private landowners. But that concession extended only to one-third of the local tithes. The other two-thirds were still treated as payable to the 'older minster,' or 'mother-church.' Those laws were repeated[1] in Canute's code.

### § 2. *Course of transition to modern Parishes.*

There can be no doubt that, in the churches to which, under Edgar's laws, one-third of the local tithes was allowed to be given, we have the original type of modern parish churches. Of their multiplication, and gradual extension over the whole country, Selden's account[2] must be true. 'Most laymen of fair estate' (he says) 'desired the country residence of some chaplains that might be always ready for Christian instruction among them, their families, and adjoining tenants.' They built and endowed churches; and the endowment of every such church, on its consecration, 'was restrained from the common treasure of the diocese, and made the only revenue which became perpetually annexed to the church of that clerk who received it.' A district was attached to the church, determined generally by the extent of those neighbouring lands of the lay founder, which were intended to receive benefit from the foundation. This became the 'parish' of the priest in charge; and the inhabitants of that district were his parish-

[1] Thorpe's *Ancient Laws*, vol. i. p. 367 (arts. 8, 11).
[2] *Hist. of Tithes*, ch. 9, § 4, p. 259 (ed. 1618).

ioners. The older sense of the word 'parish' naturally lent itself to that application. The priest was nominated by the lord, or patron, and until the latter part of the twelfth century received investiture from him, without episcopal institution. This we know on the testimony of Pope Alexander III.,[1] who condemned the practice as wrong in principle, and against 'the constitutions of the Holy Fathers.' 'We have been certainly informed' (he wrote to Archbishop Becket, and his suffragans of the province of Canterbury) 'by many complaints which have reached us, that in your parts a very bad and irregular custom has obtained prevalence for a very long time past (*a multis retro temporibus invaluisse*); namely, that clerks, influenced by blind covetousness, accept churches and ecclesiastical benefices without consent of the bishop of the diocese, or his officials, to whom that duty belongs.' An earlier attempt to establish, in such cases, the episcopal power had been made by Paschal II., but had met with resistance in England. Archbishop Anselm [2] wrote to that Pope:

'After my return to England, on being recalled to my see, I produced the apostolical decrees which I heard when present in the council at Rome, forbidding any one to receive investitures of churches from the hand of the king or of any layman, doing homage for them (*ut pro his ejus homo fieret*); forbidding also the ordination of any one who might transgress this rule. It was, however, so ill taken by the king and his chief lords, and even by the bishops themselves, and by others of less degree, that they declared they would in no wise consent to it; and that they would rather expel me from the realm, and separate themselves from the Roman Church (*et a Romana ecclesia se discessuros*).'

[1] *Decret. Greg. IX.*, lib. iii., tit. vii., cap. 3.

[2] See Selden, *Hist. of Tithes*, ch. 12, § 2 (ed. 1618), p. 377.

The abolition of this practice, and also the establishment of the principle of lapse as to churches in lay patronage, were among the reforms accomplished by the third Lateran Council[1] (A.D. 1179-80); the decrees of which, notwithstanding the difficulty which Anselm had encountered, were not long afterwards received[2] in England, as in other parts of Western Christendom. Until then, if upon a vacancy taking place in any manorial parish church, upon the estate and in the patronage of a private landowner, it was not filled up, the bishop could neither make nor compel an appointment, and the parish might remain indefinitely without a minister. As long as that state of things continued, the patron had, in practice, upon every vacancy, large powers (whether recognised as canonically legitimate or not) over the church and its endowments; and it was not until the necessity for episcopal institution, and the right of the bishop to supply a vacancy in such a church after a certain delay, had become settled, that the modern parochial system was fully established.

From the first, however, bishops, when requested to consecrate churches upon private landowners' estates, were able to require, and according to general canonical usage did in practice require, such conditions as were usual and reasonable. The compliance of the founder with those conditions was, of course, voluntary; the whole operation originated in his will to erect the church, and to seek its consecration: he doubtless knew beforehand, according to the practice of each age, what the bishop would be likely to require, and determined to meet those requirements, by endowment and otherwise, as far as his means would allow. Two minds, therefore, that of the founder and that of the

[1] See Selden, *Hist. of Tithes*, ch. 12, § 5, pp. 388, 389. [2] *Ibid.*

bishop, had to concur; there was no external compulsion operating upon either of them.

In ecclesiastical, as in other affairs, every innovation upon customary rights or interests is regarded with jealousy by those whose power it tends to diminish. The displacement, therefore, of the rights or claims of monastic and other public churches, by admitting other churches to participation in the like status and privileges, in a greater or less degree, was not likely to be regarded with favour by ecclesiastical authority, when in monastic hands. But, as the benefits which it was capable of conferring upon the common people, in country districts especially, made themselves more and more felt, bishops who understood their duty became more favourably disposed towards it; and, after it had reached a certain point of development, they, and other ecclesiastical corporations, themselves built and endowed churches, and constituted parishes of the new sort, upon their own ecclesiastical estates,[1] retaining in their hands the appointment of the priests of those churches. By these natural steps the system, after it had once been set on foot and recognised by law, had a tendency to become, and did by degrees become, universal.

This process, which (in England) probably began in the tenth, was an accomplished fact by the end of the twelfth century; but to trace its progress during that interval, from historical records, is not easy.

### § 3. *Canute's Letter, and 'Ecclesiastical Institutes.'*

The use of the word '*parochia*' in the letter,[2] already mentioned, which Canute wrote from Rome to his arch-

[1] Selden, *Hist. of Tithes*, ch. 9, § 4 (ed. 1618), pp. 260, 261.

[2] Florence, *sub anno* 1031: '*Nunc igitur præcipio, et obtestor omnes meos Episcopos et regni præpositos, per fidem quam Deo et mihi debetis,*

bishops and bishops, has by some been understood of modern parishes. It is used, however, only as to '*church-scot*,' which was to be paid 'to the church in whose parish each man lives' (*ad ecclesiam, sub cujus parochia quisque deget*). But neither in any older laws, nor in Canute's own, is there any provision which authorised or contemplated the payment of *church-scot* to any but the 'older minsters,' or mother-churches. I conclude, that in this letter '*parochia*' meant the ecclesiastical district of the old minster or mother-church, and not a parish of the modern kind.

Bishop Kennett,[1] following Spelman,[2] supposed the document, to which Mr. Thorpe has given the title of 'Ecclesiastical Institutes,' to be a collection of 'Saxon canons;' and he quoted from it this passage, as bearing upon the history of the parochial system in England:

'Let no mass-priest entice any man from the parish of another church to his church, nor instruct any one from another priest's district to attend his church and give him their tithe and the offerings which they ought to give to the other; but let every one be content with that which comes to him from his church, and thank God for it.'[3]

There are other articles,[4] following this in the same document, which it would be material to consider, if the

*quatenus faciatis, ut antequam ego Angliam veniam omnia debita quæ Deo secundum legem antiquam debemus sint persoluta; scilicet eleemosynæ pro aratris, et decimæ animalium ipsius anni procreatorum, et denarii quos Romæ ad sanctum Petrum debemus, sive ex urbibus, sive ex villis; et mediante Augusto decimæ frugum; et in festivitate Sancti Martini primitiæ seminum ad ecclesiam sub cujus parochia quisque deget, quæ Anglice ciricsceat nominantur.*'

[1] *Case of Impropriations*, etc. (1704), p. 12, and note, *ibid.*

[2] *Concil. Anglic.*, vol. i. p. 593.

[3] See Thorpe, *Ancient Laws*, vol. ii. p. 411 (art. 14), and Johnson's *Laws and Canons* (ed. 1850), vol. i. p. 459.

[4] Arts. 15, 16, 17 (Thorpe, *Ancient Laws*, vol. ii. p. 413); Johnson, *ubi supra*, p. 460.

document had been of the nature which Bishop Kennett supposed. Mr. Johnson, who better understood its nature, and who in his translation did not use (as Mr. Thorpe does) the words '*parish*,' or '*parishioners*,'[1] drew from the article itself a different inference. The word for 'priest's *district*' in the Anglo-Saxon text is '*preost-scyre*'—(*priest's shire*)—on which Mr. Johnson[2] observed:

'By this it is evident, that bounds of parishes were not yet settled by law or established by custom; and, as the diocese was then called the bishop's *shire*, so the houses and vills next adjacent to a little church were called the priest's *shire*. Just before, this *shire* is called *hyrnysse*.'

Whatever interest the proper interpretation of that document may have, it belongs really to the history of the Gallican Church in the ninth, and not of the English Church in the tenth or eleventh century. So far from being a collection of 'Saxon canons,' it is in fact (as has been elsewhere stated) an Anglo-Saxon translation—supposed to be by Aelfric—from a work written for the diocese of Orleans by its bishop, Theodulph,[3] in the first half of the ninth century; and there is no evidence whatever, nor any ground for believing, that it ever had any authority in England greater than might belong to any other work of an eminent Frank divine of that period.

### § 4. *Laws of Edward the Confessor.*

In the preface to all the manuscripts which contain the compilation called the Laws of Edward the Confessor,[4] it is

[1] The word '*parishioners*' occurs frequently in Mr. Thorpe's translation (see articles 25-29), *Ancient Laws*, vol. ii. pp. 423-425.

[2] Johnson's *Laws and Canons*, vol. i. (ed. 1850), p. 460.

[3] *Ibid.*, pp. 450, 452, note.

[4] Thorpe, *Ancient Laws*, vol. i. p. 442.

represented as a report made to William the Conqueror by a sworn jury of twelve, chosen out of a body of English noblemen and men learned in Anglo-Saxon law, returned from all the counties of England, under a commission issued by William in the fourth year of his reign, that he might 'hear from themselves what their customs were, without omission, addition, or change.'

This, if authentic, and if its contents had corresponded to the supposed commission, would be a document of great interest. But nothing can be more remote than it is from the character which the preface claims for it.

It contains altogether thirty-three articles, some of them statements of laws or customs; some historical, and of later date than the Conqueror's time; which are interjected in a very extraordinary manner.

The first place is given to ecclesiastical subjects; and among these it is noticeable, that the joint jurisdiction of civil and ecclesiastical judges, sitting together in one court (as provided by the laws of Edgar[1] and Canute),[2] is affirmed.[3] Two articles relate to tithes;[4] of which (not prædial only, but personal), the payment to 'Holy Church' is in general terms prescribed, with an enumeration in detail of titheable matters; but without mention or indication of the churches entitled to receive them:

'Let any one' (it is said) 'who shall have kept them back be compelled to payment, if necessary, by the justice of the Church and the king. These things St. Augustin preached, and these were granted by the king, and confirmed by the

[1] Art. 5 of Edgar's Secular Ordinance (Thorpe, *Ancient Laws*, vol. i. p. 269).

[2] Art. 18 of Canute's Secular Ordinances (*ibid.*, p. 387).

[3] Arts. 3 and 9 of *Leges Regis Edwardi Confessoris* (*ibid.*, pp. 443, 445).

[4] Arts. 7, 8 (*ibid.*, p. 445).

barons and people. But afterwards, by the instigation of the devil, many kept them back; and those priests who were rich were not very careful in looking after them (*non multum curiosi eraut ad perquirendas cas*), because in many places there are now four or three churches, where there was then but one, and so they began to suffer diminution' (*quia in multis locis sunt modo* iiii *vel* iii *ecclesiæ, ubi tunc temporis non erat nisi una; et sic inceperunt minui*).

This passage might, by implication, afford light as to the progress of the parochial system, if the time of which it speaks were ascertained. But the clause as to Danegeld,[1] which follows soon afterwards, speaks of a time later than the Conqueror, and was probably not written earlier than the reign of Henry I., if so soon.

'From this Danegeld' (it says) 'all land was free, which was the property, or held under the lordship of churches (*quæ de ecclesiis propria et dominica erat*); also that held of parish churches thereto (?) belonging (*etiam de ecclesiis parochiarum ad idem pertinentibus*); and they paid nothing for its redemption, because they placed more trust in the prayers of the Church than in the defence of arms. *And this liberty had Holy Church even to the time of William the younger, who sought aid from the barons of the whole country for keeping Normandy from his brother Robert when he went to Jerusalem, and they granted him four shillings* (solidos) *from every ploughland, not excepting Holy Church; which collection being made, the Church cried out, demanding back her liberty, but without success.*'

Among the secular articles (twenty-two of which follow the ecclesiastical) is one as to the royal power,[2] which no one can believe to have been delivered as law by any representatives of his Anglo-Saxon subjects to William the Conqueror. As characteristic of the compilation, though not directly germane to my subject, I extract it:

[1] Art. 11 (Thorpe, *Ancient Laws*, vol. i. p. 446).
[2] Art. 17 (*ibid.*, p. 449).

'The king, who is the vicar of the Supreme King, is appointed to this end, that he may govern and defend from wrong-doers the kingdom and people of the Lord, and, above all, Holy Church, and may destroy and root out criminals. If he do not this, he loses the name of king, as was declared by Pope John,[1] to whom Pepin and his son Charles, when they were not yet kings or princes, but under a foolish Frank king, wrote inquiring, "Whether the kings of the Franks ought so to remain content with the mere name of king?" Who answered, "It is fit that those should be called kings who vigilantly defend and govern the Church of God and His people after the example of the Psalmist King, who said, 'He who doeth proud things shall not dwell in my house,'" etc.'

After the thirty-third article (and before the last four, which are criminal and mercantile laws), comes the interjected historical matter.[2] This begins with a statement that King William, on hearing the preceding 'and other laws concerning the realm,' 'highly appreciated' it (*maxime appreciatus est eam*), and wished it to be observed throughout the kingdom; first, however, expressing a preference for the Norman law 'as deeper and more excellent' (*profundior et honestior*) 'than all others—that is, than all the laws of the Britons, English, and Picts.' But he yielded to the entreaties of the natives of the land who declared to him these laws (*omnes compatriotæ qui leges narraverunt*), and who prayed him to allow them to be observed, 'for the sake of the soul of King Edward, who had granted him the kingdom, and whose laws these were, and not of any strangers. At last he acquiesced in the counsel and prayer of the barons, and so were authorised (*auctorizatæ*) the laws of King Edward, which were devised and ordained

[1] The Pope of whom this is related by historians is Zacharias, not John.

[2] Arts. 34, 35 (Thorpe, *Ancient Laws*, vol. i. pp. 458-460).

previously in the time of King Edgar his grandfather, but after his death were set aside for sixty-eight years.'[1]

Then follows an account of the succession of kings and the duration of their reigns, from Edward the Martyr to the death of Hardiknute; 'so completing the sixty-eight years during which the laws were set aside.'

'But after King Edward came to the kingdom he, by the counsel of the barons of the realm, made them restore and confirm the law so disused, because it seemed to them good, and because his grandfather had ordained it; and so it was called the law of King Edward, which had been before set aside from the death of Edgar his grandfather till his own time.'

Then comes another historical chapter; explaining why the Confessor had not chosen Edgar Atheling for his successor, but had 'adopted William, Duke of the Normans, son of his uncle Robert, who afterwards, by God's help, conquered his right in war against Harold.'

The whole ends (in two of the three extant manuscript copies) with this note:[2]

'Here end the laws of Edward, first devised by Edgar his grandfather, and confirmed by William the Conqueror of England, and previously approved in King Cnuto's time.'

It must be added, that very little of the matter included in this compilation is contained in the laws of Edgar, nor is much of it in those of Canute. In the form in which it stands it is apocryphal, and not to be relied on for any historical purpose.

### § 5. *Laws of the Conqueror.*

The laws of William the Conqueror himself[3] have a

[1] Including in those sixty-eight years the reign of Canute.
[2] Thorpe, *Ancient Laws*, vol. i. p. 462. [3] *Ibid.*, p. 467.

title prefixed to them, which, if properly so applied, tends still further to stamp the collection just mentioned as spurious, viz.—

'These are the laws and customs which King William, after his conquest of England, granted to be observed by all the people of the English, being the same which his predecessor and kinsman, King Edward, observed in the realm of the English.'

These laws, of which there seems no reason to doubt the authenticity (most of them taken from those of Canute and earlier kings), are different from the preceding. They contain no ecclesiastical matter, except one article,[1] repeating with some variation that law of Canute which imposed graduated penalties for the violation of the privileges of churches, according to their rank; and another,[2] for the payment of Peter's pence. The former makes the forfeiture, if the church violated is a cathedral, or a monastery, or other religious house (*cenobium vel quæcunque religiosorum ecclesia*), 100 shillings (*solidos*); if 'a mother parish church' (*matrix ecclesia parochialis*), 20 shillings; if a chapel, 10 shillings. The 'mother parish church' must here be one of lower degree than cathedrals and monastic or conventual churches. It can only be the church, with a burial-ground, of Edgar's laws; and the title assigned to it (from its relation, presumably, to chapels which might be dependent upon it) marks the progress of the parochial system.

That we have here really those 'laws of the Confessor,' which William confirmed (as the title says), is rendered probable by a later statute[3] of his own, containing this clause:[4]

[1] Art. 1 (Thorpe, *Ancient Laws*, vol. i. p. 467).
[2] Art. 17 (*ibid.*, p. 475). [3] *Ibid.*, pp. 491-494. [4] *Ibid.*, p. 493.

'This also we enjoin, that all men hold and observe in all things the laws of King Edward, with these additions which we have ordained for the benefit of the English.'

In addition to these laws, William, by his well-known charter of jurisdiction [1] (probably in the year A.D. 1072), separated the ecclesiastical from the civil courts; and required all spiritual causes to be thenceforth brought before the bishop or his officials only.

## § 6. *Laws ascribed to Henry I.*

Into a criticism of the compilation called 'The Laws of Henry the First,' [2] or into the proof that it does not, and cannot, represent any body of Anglo-Saxon laws enacted or confirmed by Henry I., it would be superfluous to enter; as this has been adequately done by the late learned Dr. Allen, in his 'Notes,' [3] appended to it in Mr. Thorpe's *Ancient Laws*. The clauses [4] of its seventh chapter, providing that in the county courts '*the causes Christian*' should be first heard, then the pleas of the Crown, and last, civil actions; and of the thirty-first chapter, that 'there ought to be present in the county court, the bishops, counts, and other high officers, who should after just consideration determine God's laws and secular affairs' (*interesse comitatui debent episcopi, comites, et ceteræ potestates, quæ Dei leges et sæculi negotia justa consideratione diffiniant*),—are evident anachronisms, bringing back the mixed ecclesiastical and civil jurisdiction of Edgar and Canute, and ignoring the Conqueror's charter.

[1] Thorpe, *Ancient Laws*, vol. i. p. 495 (see *Defence of the Church*, etc., 3d ed., p. 11, and note, *ibid.*) [2] *Ibid.*, pp. 497-608.

[3] *Ibid.*, pp. 609-631 (and see Mr. Thorpe's preface, p. xviii.)

[4] Ch. 7, § 3, and ch. 31, § 3 (*ibid.*, pp. 514, 534).

In the eleventh [1] chapter of this digest of laws and rules of procedure and forensic practice (for that is its real character), the compulsory provisions of the laws of Edgar and Canute, for taking tithes by civil process, and forfeiting eight-tenths of the gross produce of the land against which that remedy might be put in force, half to the lord, and half to the bishop, are exactly repeated.

In its clauses which relate to offences [2] by the clergy, and their privileges [3] (of which there are several), I find nothing which throws any light upon the development of the parochial system.

### § 7. *Endowments of parish churches with Tithes.*

The course of our inquiry has brought us down to the twelfth century without elucidating, any further than was done by the laws of Edgar and Canute, the origin of those endowments of modern parish churches (not appropriated to monasteries) with tithes, which by the end of that century had become so general, as to establish in church law—followed and allowed by the temporal law—a general presumption, that every parish church, in the absence of proof to the contrary, was endowed with its own tithes. There was certainly no such general appropriation of tithes to parish churches made by any law ever enacted in England: for the laws of Edgar and Canute, which made the nearest approach to such an enactment, gave to certain churches on private estates, and in private patronage, one-third only of the local tithes. The question is, how did that third pass into the whole? There is not, as far as I know, so much even as a canon of any council, or a decree

[1] Ch. 11, § 2 (Thorpe, *Ancient Laws*, vol. i. p. 520).
[2] Ch. 64, 73 (*ibid.*, pp. 566, 567, 578). [3] Ch. 66 (*ibid.*, p. 569).

of any Pope, in the nature of a legislative act, enlarging the right, or appropriating tithes generally to parish churches, in England or elsewhere.

The explanation of Selden,[1] and of most English common lawyers,[2] has been, that until the third Council of Lateran (A.D. 1179-80), the lords or owners of the lands from which prædial tithes arose might dispose of them as they pleased, provided that they did so, in one way or other, for ecclesiastical purposes; and that, out of this power, all the endowments, both of monasteries and of parish churches, with tithes, which took place between the tenth and the thirteenth centuries, arose. Selden styled those endowments '*arbitrary consecrations*.' Ecclesiastical controversialists of his day, and for some time afterwards, to whom such a view of the facts seemed repugnant to that doctrine of the divine right of tithes, which (with or without modification) they generally maintained, assailed it with vehemence. Dean Comber[3] called it Mr. Selden's 'new device of arbitrary consecrations.' Dean Prideaux[4] (who arrived at the same point by reliance on divine precedent, rather than divine commandment) called it Mr. Selden's 'wild chimera,' 'wild conceit,' and by other hard names. As, however, the institution of parishes and parish priests was not coeval either with the foundation of the Church, in England or elsewhere, or with the practice of paying tithes to the Church, the general parochial right is a thing

[1] *Hist. of Tithes*, ch. 7, § 1, and ch. 11, § 1 (ed. 1618, pp. 142, 297).

[2] Blackstone's *Commentaries*, vol. i. p. 112; Cruise's *Digest*, tit. xxii.; *Tithes*, § 53; and see Coke, *2nd Institute*, p. 641.

[3] *An Historical Vindication of the Divine Right of Tithes*, by Thos. Comber, D.D. (1682), p. 104.

[4] *Original and Right of Tithes*, published A.D. 1707 (2nd ed. 1736, pp. 138-192).

to be historically accounted for; no theory of divine right, or inference from divine precedent, could be sufficient to account for it.

Selden may have been the author of the phrase '*arbitrary consecration*'; but the view of historical facts which he used it to describe was no 'new device,' no 'chimera,' or 'conceit' of his. That laymen did in fact, upon the continent of Europe, make many 'arbitrary' appropriations of tithes, some to religious houses, some to themselves and other laymen, is proved by the protests and denunciations of Popes and other ecclesiastical authorities who disapproved of it; and that, until the third Lateran Council, those protests and denunciations were ineffectual to set aside or nullify what was so done, is equally clear; because Pope Urban II.,[1] while making a decree against the future creation of new titles of the same kind without the bishop's consent, found it necessary, 'for the sake of peace, and to avoid scandal,' to confirm all such titles previously acquired, whether from clerks or monks, or from other persons. If the Church of Rome said of those 'arbitrary' appropriations, '*fieri non debent*,' she found herself compelled also to say of them, '*facta valent*.'

The authorities, in this country, for the proposition of fact (as to the period before the third Lateran Council), on which the views of Selden and those who followed him rest, are too ancient, and of too much weight, to be set aside by merely imputing ignorance of ecclesiastical matters to common lawyers. I may mention some of them.

1. In the *Chronicle of Battel Abbey*,[2] which extends from the foundation of that abbey in A.D. 1066 to A.D.

[1] *Ante*, p. 67.

[2] *Chronicle of Battel Abbey from* 1066 *to* 1176 (transl. by M. A. Lower, London 1851), p. 21.

1176, and was written by an abbot or monk of that house about the time of the latest entries in it, there is this statement:

'*As it was permitted up to that time* (*i.e.* the time of the Conquest, when the abbey was founded), *for every one to pay his tithes where, or to whomsoever he would*, many of those who resided in the neighbourhood assigned theirs to the abbey in perpetuity; and these, being confirmed by episcopal authority, remain payable to the abbey until this day.'

2. Two writs of prohibition from the king's court to ecclesiastical courts (in cases involving, not the subtraction of tithes, but the title to them), are cited by Selden, one of the reign of King John, or Henry III.,[1] the other of A.D. 1279, the seventh year of King Edward III.[2] In both these (judicial forms of that time) it is averred, that, 'in certain of our demesnes, we' (the king) 'have power to grant such tithes, *and in like manner many of the great men of our kingdom in their demesnes.*' It is no objection to the authority of those writs, as evidence of early practice, that they were issued after the third Lateran Council. The old forms continued to be used, though new grants of the same kind might be no longer possible.

3. Sir Robert Parnynge,[3] Chief Justice (afterwards Lord Treasurer and Chancellor), in the same year (A.D. 1279) in which the latter of those writs was issued, said from the bench, that 'anciently, before a new constitution made by the Pope, a patron of a church might grant the tithes within that parish to another parish.'

[1] *Hist. of Tithes*, ch. 11, § 2 (ed. 1618), pp. 353-356. Cited from Fitzherbert's *Natura Brevium*, 40 N.

[2] *Ibid.*, p. 357. Cited from a Cottonian manuscript.

[3] *Year Book*, 7 Edw. III., fol. 5, pl. 8. (See Selden, *Ibid.*, p. 292.)

4. In A.D. 1371, Ludlow,[1] one of King Edward III.'s Judges of Assize, also said, 'Anciently every man might grant the tithes of his land to any church that he pleased.'

5. Lyndwode, the famous English Canonist, who was Official Principal of the Provincial Court of Canterbury under Henry VI., and afterwards Bishop of St. David's, said in his '*Provinciale*,'[2] that before the Lateran Council of A.D. 1179, a layman might obtain from a church entitled to tithes a grant of them, to be held by himself feudally, and might either retain them or grant them, with the consent of the bishop, to any other monastery or church. I raise no question as to the qualifications expressed in this passage: I refer to it only for the light which it throws on some of the ways in which parish churches might come to be endowed with tithes.

One entire chapter[3] of Selden's *History of Tithes* is occupied with a series of extracts from the chartularies of Abingdon, Osney, Guisborough, Rochester, Reading, Canterbury (St. Augustin's), Crowland, Tynemouth, Boxgrove, St. Neot's, St. Leonard's (Yorkshire), Battle, Lewes, Eye, Pershore, and other abbeys and priories, which prove conclusively that lay benefactors often granted the prædial tithes of their lands (apart from and without any appropriation of churches), in the eleventh and twelfth centuries, to those religious houses. If they could do that, they might with equal right and reason endow parish churches on their own estates with the prædial tithes of their lands within the parishes; and the probability was that they would do so. No more likely explanation of the general prevalence of

[1] *Year Book*, 44 Edw. III., fol. 5, pl. 22. (See Selden, *Hist. of Tithes*, p. 292, ed. 1618.)

[2] Title, '*De locato et conducto.*' (*Ibid.*, ch. 13, § 1, ed. 1618, p. 403.)

[3] Ch. 11.

such parochial endowments (where churches were not appropriated to monasteries) has yet been suggested.

Dean Comber[1] and others, who disputed Selden's views, suggested that all those lay grants of tithes to monasteries had episcopal confirmation. This (if subsequent ratification and confirmation only were meant) may generally—perhaps in all cases—have been true; although there is no proof that the confirmation was always simultaneous with the grant; on the contrary, it may be inferred, both from the terms of the confirmatory charters, and from what is known of the history of monastic titles to tithes upon the continent of Europe, that it was often otherwise. But, so far as parochial endowments with tithes are concerned, it is not necessary for their explanation to suppose them to have been 'arbitrary,' in such a sense as to exclude the consent of the bishop, or (if the effect was to transfer the title to all, or to two-thirds, of the tithes from a religious house to a parish church) the consent of the religious corporation which ought, otherwise, to have received the tithes. Whenever the endowment with tithes took place (as in by far the greater number of parish churches erected after King Edgar's time it probably did), at the time, and as part of the solemnities, of consecration, the bishop's consent must necessarily have been given. And it is not too much to presume that, whenever a powerful landowner desired to enlarge the right of a manorial parish church on his land from the one-third of tithes conceded to it by King Edgar's laws to the whole, and to change it (in effect) from a vicarage into a rectory, he might be able, by influence or by gifts, to obtain from the 'older minster'—the bishop concurring—a relinquishment of its claim. It must be remembered, as to new

[1] Comber's *Divine Right of Tithes* (1682), ch. II, p. 200.

churches, that the erection, consecration, and endowment of every one of them (the endowment being, as a rule, simultaneous with the consecration) was a distinct and separate act in each particular case.

Dean Prideaux[1] asked:

'Had the right of tithes here grown up from such arbitrary consecrations as Mr. Selden asserts, why among all his instances doth he not bring so much as one, of such a consecration of tithes in a parish made to the parish church? Is it likely that those who had such tithes in their power arbitrarily to consecrate should give them all from their parish church, and none to it? And he added, 'It seems most likely that their first inclination should be to their own church, where they attended divine service, and received the sacraments. And therefore, had the civil right of tithes come this way into the church, there must have been some instances of the consecration of them to the parish church, where they arose, as well as to other churches out of the parish; and would Mr. Selden have brought but one such instance, it would have made more for his purpose than all the rest put together. And certainly such he would have brought, were there any such to be found; and since there can none such be found, it is a sufficient proof that there were never any such, but that all parochial tithes were from the time of King Ethelwulf due of common right to the parish church.'

Of King Ethelwulf, and his supposed grant of tithes, enough has been said elsewhere. Upon Selden's word '*arbitrary*' (if it is assumed to mean that all grants of tithes made by laymen were against or without the bishop's consent), I lay no stress for the present purpose. But Dean Prideaux was under the impression that the local tithes were appropriated to parish churches by some general law, and not by express and particular endowments, at the times of their consecration, or otherwise. In this he was certainly

[1] *Original and Right of Tithes* (ed. 1736), p. 195.

mistaken. The deeds of consecration and endowment of ancient parish churches have not often been preserved; but instances enough remain to prove what the course of practice was, although Selden may not have cited them.

The practice of the Gallican Churches in this respect is likely (at least after the middle of the tenth century) to have been known and followed here. Among the 'Forms' of Marculfus, there is one[1] which exemplifies the practice of the Gallican Church, at the beginning of the ninth century, as to churches founded and endowed by bishops. It is a deed of consecration and endowment of a church at Cadillac, in the south of France, made with the consent of the episcopal chapter. It recites that the Bishop had built the church, and had appointed it to be the church of certain specified townships, to which the inhabitants of those townships were to go for masses, baptism, and preaching, *and that they should pay their tithes to that church;* and he at the same time endowed it with a manse, and with part of a vineyard, and certain arable land.

Of consecration deeds in this country, in which the endowment of the churches consecrated by lay founders is recorded, one example was made public in Sir William Dugdale's *History of Warwickshire*,[2] and another by Bishop Kennett, in the Appendix to his *Case of Impropriations*.[3] Both instances belong to the first half of the twelfth century; one to the diocese of Worcester, the other to that of St. David's. The consecrating bishop in

[1] Form 11 (Baluze, *Capit. Reg. Franc.*, vol. ii. p. 442).

[2] *Hist. of Warwickshire* (1656), p. 630.

[3] *Case of Impropriations*, etc. (1704), Appendix, p. 34; also in *Cartularium Prioratus S. Johannis Evangelistæ de Brecon* (London 1884). Both these charters are translated in an Appendix to *Defence of the Church*, etc. (3rd ed.) pp. 357-360; where the later history of the Church of Hay is also stated.

the one case was Simon, Bishop of Worcester from A.D. 1125 to 1151; the church was that of Exhall in Warwickshire. By that deed, the bishop confirmed the endowment (*donationem*) made to the church on the day of its consecration, by lay benefactors, there named: the endowments being certain quantities of land, *with all the donors' tithes of every kind* (*cum decimis suis plenariis*), freed and acquitted from all secular service. In the other case, the consecration was by Bernard, the first Norman Bishop of St. David's; and the deed, being attested by a witness described as 'clerk of King Henry,' must have been executed before the death of Henry I., in A.D. 1135. The church consecrated in that case was for the parish of Hay, in Brecknockshire; and the deed witnesses, that at the time of its consecration the lay founder (who is named), with the permission of his superior lord (also named, and then present) 'gave and granted in perpetual alms, for the endowment (*dotem*) of the said church,' certain lands therein particularly described:

'Also, he gave to the said church all the tithes of all his land of Hay, in all things, and of all his tenants of the fee of Hay; and, to prevent question, he expressly gave and granted the tithes, to wit, of corn and hay, of colts and calves, of lambs and pigs, of wool and cheese, of coppice-wood, and of Welsh revenue, and of passage and pleas.'

There cannot be any reason to suppose that these[1] were exceptional cases: the forms are strong evidence that they were examples of a practice general on consecrations of new parish churches after the parochial system had begun to be established. How many more such deeds may have been preserved, I do not know; the preservation of these was

[1] See *post*, Appendix H, for the Latin text of the three charters here referred to.

due to the accident, that they passed into monastic hands. They give, as it seems to me, a sufficient and satisfactory answer to Dean Prideaux's challenge; justifying the conclusion, otherwise reasonable and probable, that it was by means of express and particular grants of this kind, that each parish church, as it was founded and consecrated (after King Edgar's time), obtained a title to the parochial tithes, when the landowner (whether lay or ecclesiastical) and the bishop were agreed in desiring that such an endowment should be made.

# APPENDIX A (see pp. 37-40)

## 'CAPITULARE EPISCOPORUM'

*N.B.*—The first column exhibits the Andain text, as printed by Martene and Durand; some printer's errors (*e.g.* nominative forms instead of the contracted accusative) being corrected. The second column exhibits the Metz text, as printed by Sirmondi and Baluze.

At the foot is a collation of the Andain text with three 'Egbertine' compilations, viz. (B) the Bodleian 'Penitential'; (C) the Worcester 'Excerptions,' in the library of Corpus Christi College, Cambridge; and (N) the later Worcester 'Excerptions,' *Nero A.* 1 of the Cottonian collection in the British Museum.

| ANDAIN TEXT. | METZ TEXT. |
| --- | --- |
| | 'CAPITULARE EPISCOPORUM.' |
| Hæc sunt Capitula ex divinarum Scripturarum scripta, quæ electi Sacerdotes custodienda atque adimplenda censuerunt. | Hæc sunt Capitula ex divinarum Scripturarum scriptis, quæ electi Sacerdotes custodienda atque adimplenda censuerunt. |
| | INCIPIUNT CAPITULA. |
| | 1. *Ut sacerdotes assidue orent pro Domno Imperatore.* |
| 1. Ut unusquisque sacerdos ecclesiam suam cum omni diligentia ædificet et relliquias sanctorum cum summo studio vigiliarum noctis et divinis[1] officiis conservet. | Ut cuncti sacerdotes precibus assiduis pro vita et imperio domni Imperatoris et filiorum ac filiarum salute orent. |

[1] *Diurnis*, C. and N.

ANDAIN TEXT.

2. Ut omnes sacerdotes horis competentibus diei et noctis suarum sonent ecclesiarum signa et sacra tunc Deo[1] celebrent officia, et populos erudiant quomodo aut quibus Deus adorandus est horis.

3. Ut omnibus festis diebus et[2] dominicis unusquisque sacerdos evangelium Christi populo prædicet.[3]

4. Ut unusquisque sacerdos cunctos sibi pertinentes erudiat ut sciant qualiter decimas totius facultatis ecclesiis divinis debite offerant.

5. Ut ipsi sacerdotes populi[4] suscipiant decimas et nomina eorum et[5] quæcunque[6] dederint scripta habeant et secundum autoritatem canonicam coram testibus[7] dividant et ad ornamentum ecclesiæ primam eligant partem secundam autem ad usum pauperum adque peregrinorum per eorum manus misericorditer cum omni humilitate dispensant[8] tertiam vero partem sibimetipsis soli[9] sacerdotes reservant.[10]

6. Ut unusquisque sacerdos orationem dominicam et symbolum populo sibi commisso curiose insinuent[11] ac totius religionis studium et Christianitatis cultum eorum mentibus ostendant.[12]

METZ TEXT.

2. *Ut orent pro episcopo suo.*

Ut unusquisque sacerdos quotidianis adsistat orationibus pro pontifice cujus gubernatur regimine.

3. *De cura ecclesiæ et sacrarum relliquiarum.*

Ut unusquisque sacerdos ecclesiam suam cum omni diligentia ædificet et relliquias sanctorum cum summo studio vigiliarum noctis et diurnis officiis conservet.

4. *Ut evangelium Christi populo prædicent.*

Ut omnibus festis et dicbus dominicis unusquisque sacerdos evangelium Christi populo prædicet.

5. *Quænam populo præcipue insinuanda sint.*

Ut unusquisque sacerdos orationem dominicam et symbolum populo sibi commisso curiose insinuet ac totius religionis studium et Christianitatis cultum eorum mentibus ostendat.

6. *De decimis a populo dandis.*

Ut unusquisque sacerdos cunctos sibi pertinentes erudiat ut sciant qualiter decimas totius facultatis ecclesiis divinis debite offerant.

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[1] *Domino*, C. and N.
[2] *Festis et diebus*, B. C. N.
[3] *Prædicet populo*, B. C. N.
[4] *A populis*, B. C. N.
[5] *Et* omitted, B. C. N.
[6] *Quicunque*, B. C. N.
[7] *Timentibus*, B.; TIMTIB, *C.*; TIMTIBS, *N.*
[8] *Dispensent*, B. C. N.
[9] *Soli* omitted, B. C. N.
[10] *Reservent*, B. C. N.
[11] *Insinuet*, B. C. N.
[12] *Ostendat*, B. C. N.

| ANDAIN TEXT. | METZ TEXT. |
| --- | --- |
| 7. Ut cuncti sacerdotes precibus assiduis pro vita et imperio domni Imperatoris et filiorum ac filiarum salute orent. | 7. *Quomodo dividendæ sint decimæ.* Ut ipsi sacerdotes populi suscipiant decimas et nomina eorum quicunque dederint scripta habeant et secundum autoritatem canonicam coram testibus dividant et ad ornamentum ecclesiæ primam eligant partem secundam autem ad usum pauperum vel peregrinorum per eorum manus misericorditer cum omni humilitate dispensent tertiam vero partem semetipsis soli sacerdotes reservent. |
| 8. Ut unusquisque sacerdos quotidianis adsistat orationibus pro pontifice cujus gubernatur regimine. | 8. *Ut officia divina competentibus horis non prætermittant.* Ut omnes sacerdotes horis competentibus diei et noctis sonent signa ecclesiarum et sacrata Deo celebrent officia et populos erudiant quomodo aut quibus Deus adorandus est horis. |
| 9. Ut nullus sacerdos in domibus vel aliis locis nisi in ecclesiis Deo[1] dicatis[2] celebrare missas audeat. | 9. *Ut missas extra ecclesiam non celebrent.* Ut nullus sacerdos in domibus vel aliis locis nisi in ecclesiis dedicatis celebrare missas audeat. |
| 10. Ut cunctis[3] sacerdotibus jus et tempus baptismatis temporibus congruis secundum canonicam institutionem cautissime observetur. | 10. *Ut congrua tempora baptismi serventur.* Ut a cunctis sacerdotibus jus et tempus baptismatis temporibus congruis secundum canonicam institutionem cautissime observetur. |
| 11. Ut omnes sacerdotes quibuscunque horis omnibus indigentibus baptismum infirmitatis causa diligentissime tribuant. | 11. *Ut infirmi quolibet tempore baptizentur.* Ut omnes sacerdotes quibuscunque horis omnibus indigentibus baptismum infirmitatis causa diligentissime tribuant. |

[1] *Deo* omitted in B. C. N. [2] *Dedicatis*, B. C. N. [3] *A cunctis*, B. C.

ANDAIN TEXT.

12. Ut nullus presbyter sacrum officium sive baptismale sacramentum aut aliquid bonorum [1] spiritalium pro aliquo precio vendere præsumat ne vendentes et ementes in templo columbas imitentur· ut pro [2] his quæ [3] adepti sunt gratia divina [4] non pretia concupiscant terrena sed solum [5] regni coelestis gloriam promereantur accipere.

13. Ut nullus presbyter a sede propria [6] sanctæ ecclesiæ sub cujus titulo ordinatus fuit ammonitionis causa ad alienam pergat ecclesiam sed in [7] eadem [8] devotus usque ad vitæ permaneat exitum.

14. Ut nullus ex sacerdotum numero ebrietatis vitium nutriet [9] nec alios cogat per suam jussionem inebriari.

15. Ut nullus sacerdos extranearum mulierum habeat familiaritatem nec in sua domu in qua ipse habitat nullam [10] mulierem nunquam [11] permittat habitare.

METZ TEXT.

12. *Ut pro baptismo et aliis spiritualibus pretium non exigant.*

Ut nullus presbyter sacrum officium sive baptismale sacramentum aut aliquid bonorum spiritualium pro aliquo pretio vendere præsumat ne vendentes et ementes in templo columbas imitentur ut pro his qui adepti sunt gratiam divinam non pretia concupiscant terrena sed solum regni cælestis gloriam promereantur accipere.

13. *Ut in qua ordinati sunt ecclesia permaneant.*

Ut nullus presbyter a sede propria sanctæ ecclesiæ sub cujus titulo ordinatus fuit ambitionis causa ad alienam pergat ecclesiam sed in eadem devotus usque ad vitæ permaneat exitum.

14. *Ut ebrietatem in se et in aliis caveant.*

Ut nullus ex sacerdotum numero ebrietatis vitium nutriat nec alios cogat per suam jussionem inebriari.

15. *Ut cum extraneis mulieribus non habitent.*

Ut nullus sacerdos extranearum mulierum habeat familiaritatem nec in sua domo in qua ipse habitat ullam mulierem unquam permittat habitare.

[1] *Donorum*, B. C. N. [2] *Plus* (omitting *his*), C. [3] *Qui*, C.
[4] *Gratiam divinam*, C.; *per gratiam divinam*, B. N.
[5] *Solam*, B. C. N. [6] *Propria* is omitted in N.
[7] For *in eadem*, C. and N. have *ibidem*.
[8] *Ea*, B. [9] *Nutriat*, C. N.
[10] *Ullam*, B. C. N. [11] *Unquam*, B. C. N.

| ANDAIN TEXT. | METZ TEXT. |
| --- | --- |
| 16. Nulli[1] sacerdotum liceat fide-jussorem esse neque derelicta propria lege ad sæcularia judicia accedere presumat.[2] | 16. *Ut fidejussores non sint et sæcularia judicia non adeant.*<br>Nulli sacerdotum liceat fide-jussorem esse neque derelicta propria lege ad secularia judicia accedere præsumat. |
| 17. Nemo[3] ex sacerdotum numero[4] arma pugnantium unquam portet nec litem contra proximum ullam excitet. | 17. *De possessione triginta annorum.*<br>Ut qui possessionem ecclesiæ vel parrochiam per triginta annos sine alicujus interpellatione tenuerit jure perpetuo possideat Si vero inde crebro repetitum fuerit fiat diligens inquisitio Et si eam qui repetit juste quærere potuisset adhibitis veracibus et nobilibus testibus quod repetit confirmando vindicet. |
| 18. Ut nullus presbyter edendi aut bibendi causa ingrediatur[5] in tabernis. | 18. *Ut arma non gerant nec lites moverint.*<br>Nemo ex sacerdotum numero arma pugnantium umquam portet nec litem contra proximum ullam excitet. |
| 19. Ut nullus sacerdos quicquam cum juramento juret sed simpliciter cum puritate et veritate omnia dicat. | 19. *Ut tabernas non ingrediantur.*<br>Ut nullus presbyterorum edendi aut bibendi causa ingrediatur in tabernas. |
| 20. Ut cuncti sacerdotes omnibus illis confitentibus eorum crimina dignam pœnitentiam cum summa vigilantia ipsis indicant[6] et omnibus infirmis ante exitum vitæ viaticum et communionem Corporis Christi misericorditer tribuant. | 20. *Ut a juramento abstineant.*<br>Ut nullus sacerdos quicquam cum juramento juret sed simpliciter cum puritate et veritate omnia dicat. |

[1] *Ut nulli*, N.
[2] *Præsumat* omitted in B. N.
[3] *Ut nemo*, N.
[4] *Sacerdotum ex numero*, B. C. N.
[5] *Gradiatur*, B. C. N.
[6] *Indicent*, B. N.; *judicent*, C.

ANDAIN TEXT.

21. Ut secundum diffinitionem sanctorum patrum siquis infirmatur a sacerdotibus oleo sanctificato cum orationibus diligenter unguatur.

22. *De nonis et decimis.*[1]

Volumus atque jubemus ut de omni conlaboratu et de vino et feno fideliter et pleniter ab omnibus nona et decima persolvatur De nutrimine vero pro decima sicut hactenus consuetudo fuit ab omnibus observetur Siquis tamen episcoporum fuerit qui argentum pro hoc accipere velit in sua maneat potestate.

23. *De antiquis ecclesiis ut non rem suam habeant.*[2]

Ut nec decimis nec aliis possessionibus priventur ita ut oratoriis tribuatur.

24. *De spiritalibus filiolis.*[3]

Deinde præcipimus ut unusquisque compater vel proximi spiritales filios suos catholice instruant.

25. *De sacerdotibus.*[3]

Ut juxta Apostolicam vocem irreprehensibiles sint et moribus ornati et nequaquam turpibus

METZ TEXT.

21. *Ut pœnitentiam confitentibus et viaticum infirmis tribuant.*

Ut cuncti sacerdotes omnibus illis confitentibus eorum crimina dignam pœnitentiam cum summa vigilantia ipsis indicent et omnibus infirmis ante exitum vitæ viaticum et communionem Corporis Christi misericorditer tribuant.

22. *De unctione infirmorum.*

Ut secundum diffinitionem sanctorum patrum siquis infirmatur a sacerdotibus oleo sanctificato cum orationibus diligenter unguatur.

[*The Metz text ends here.*]

[1] Not in B. C. or N.

[2] Not in B. or C. Article 24 of N. is, '*Ut ecclesiæ antiquitus constitutæ nec decimis nec alia ulla possessione priventur, ita ut novis oratoriis tribuantur.*'

[3] None of these are in B. C. or N.

lucris deserviant juxta illud quod est scriptum, *Nemo militans Deo implicet se negotiis sæcularibus ut ei placeat cui se probavit:* Et a turpibus lucris et usuris non solum ipsi abstineant verum etiam plebes sibi subditas abstinere instruant.

### 26. *De incestuosis.*[1]

Ut incestuosi juxta canonicam sententiam pœnitentia multentur Qui vero decimas post crebras admonitiones et prædicationes sacerdotum dare neglexerint excommunicentur Juramento vero eos constringi nolumus.

### 27. *De discretione in Corporis et Sanguinis Domini perceptione.*[1]

Cavendum est enim ne si nimium in longum differatur ad



perniciem animæ pertineat; dicente Domino, *Nisi manducaveritis carnem filii hominis et biberitis ejus sanguinem non habebitis vitam in vobis.* Si vero indiscrete accipiatur timendum est illud quod ait Apostolus; *Qui manducat et bibit indigne judicium sibi manducat et bibit.* Juxta ergo Apostoli documentum probare se debet homo et sic de pane illo manducare et de calice bibere, ut videlicet abstinens se aliquot diebus ab operibus carnis, et purificans corpus animamque suam, præparet se ad percipiendum tantum sacramentum; exemplo David, qui nisi se confessus fuisset abstinuisse se ab opere conjugali ab heri et nudius tertius nequaquam panes propositionis a sacerdote accepisset.

[1] Not in B., C., or N.

# APPENDIX B (see pp. 154, 155)

COMPARISON of corresponding passages in Archbishop Odo's Injunctions and the Legatine Injunctions of A.D. 785-787.

[*N.B.*—The text of Odo's Injunctions is from Spelman's *Concilia*, vol. i. p. 415; that of the Legatine Injunctions from the 'Magdeburg Centuries.']

| ODO'S INJUNCTIONS. | LEGATINE INJUNCTIONS. |
|---|---|
| *Article* 2. | *Article* 11. |
| Ammonemus Regem et Principes et omnes qui in potestate sunt, ut cum magna humilitate suis Archiepiscopis omnibus que aliis Episcopis obediant; quia illis claves regni cælorum datæ sunt, et habent potestatem ligandi atque solvendi. . . . | Ita quoque Reges et Principes admonuimus, ut obediant ex corde cum magna humilitate suis Episcopis; quia illis claves cæli datæ sunt, et habent potestatem ligandi atque solvendi. . . . |
| Habeatque Rex prudentes consiliarios Deum timentes super regni negotia; ut populus, bonis exemplis Regis et Principum eruditus, proficiat in laudem et gloriam Dei. | Habeantque Reges consiliarios prudentes, Dominum timentes, moribus honestos, ut populus, bonis exemplis Regum et Principum eruditus et confortatus, proficiat in laudem et gloriam Omnipotentis Dei. |
| *Article* 3. | *Article* 3. |
| Ammonendi sunt Episcopi, . . . ut suas parrochias omni anno cum summa diligentia prædicantes verbum Dei circumeant, ne aliquis per incuriam pastoris per devia cujuslibet ignorantiæ errans lupinis pateat morsibus lacerandus. Ne quis turpis lucri gratia, sed spe | Unusquisque Episcopus parochiam suam omni anno circumeat; diligenter conventicula per loca congrua constituendo, quo cuncti convenire possint ad audiendum Verbum Dei; ne aliquis per incuriam pastoris per devia cujuslibet ignorantiæ errans, rugientis |

ODO'S INJUNCTIONS.

mercedis æternæ, gregem sibi commissum pascere studeat. Quod enim gratis excepimus, gratis impendere non differamus; absque ullo timore vel adulatione cum omni fiducia verbum veritatis prædicare Regi, Principibus populi sui, omnibus dignitatibus; et nunquam veritatem subterfugere, neminem injuste damnare, neminem nisi juste communicare, omnibus viam salutis demonstrare.

*Article* 7.

Interdicimus omnibus Christianis injusta connubia et incæstuosa, tam cum monialibus vel cognatis, vel cum aliis illicitis personis. Nos quippe eandem Apostolicam auctoritatem sequentes, simili modo jaculum maledictionis talibus imponimus, nisi correptus a tam nefanda præsumptione ad satisfactionem perveniat.

*Article* 8.

. . . Sit concordia ubique et unanimitas inter Episcopos et Principes omnemque populum Christianum; ut sit unitas ubique Ecclesiarum Dei et pax; immo una sit Ecclesia fide, spe, et charitate; unum habens Caput quod est Christus; cujus membra se invicem adjuvare, mutuaque

LEGATINE INJUNCTIONS.

leonis morsibus invadatur. . . . Et ne quis turpis lucri gratia, sed spe mercedis æternæ, gregem sibi commissum pascere quærat; et quod gratis accepit, omnibus gratis præstare studeat. . . .

*Article* 11.

. . . Autoritate Divina fiducialiter et veraciter, absque ullo timore vel adulatione loqui verbum Dei Regibus, Principibus, omnibusque dignitatibus; nunquam veritatem subterfugere; nulli parcere; neminem injuste damnare; neminem sine causa excommunicare; omnibus viam salutis, tam verbis quam exemplis, demonstrare.

*Article* 15.

Interdicuntur omnibus injusta connubia et incæstuosa, tam cum ancillis Dei vel aliis illicitis personis, quam cum propinquis et consanguineis, vel alienigenis uxoribus: et omnino anathematis mucrone perfoditur qui talia agit, nisi correctus resipiscat a tam nefanda præsumptione, et suo Episcopo obtemperans seipsum ad æquitatis normam corrigat et revocet.

*Article* 14.

Sit concordia ubique, et unanimitas inter Reges et Episcopos, ecclesiasticos et laicos, omnemque populum Christianum; ut sit unitas ubique Ecclesiarum Dei, et pax in una Ecclesia, in una fide, spe, et charitate permanens, unum Caput habens, quod est Christus; cujus membra se invicem

ODO'S INJUNCTIONS.

charitate diligere debeant; ut Ipse ait: '*In hoc cognoscant omnes,*' et reliqua.

*Article* 10.

Decimo capitulo mandamus, et fideliter obsecramus, de decimis dandis, sicut in lege scriptum est: '*Decimam partem ex omnibus frugibus tuis seu primitiis deferas in domum Domini Dei tui.*' Rursum per Prophetam: '*Adferte,*' inquit, '*omnem decimam in horreum Meum, ut sit cibus in domo Mea; et probate Me super hoc, si non aperuero vobis cataractas coeli, et effudero benedictionem usque ad abundantiam; et increpabo pro vobis qui comedit et corrumpit fructum terræ vestræ; et non erit ultra in ea sterilis.*' Unde et cum obtestatione præcipimus, ut omnes studeant de omnibus quæ possident dare decimas; quia speciale Domini Dei est; et de novem partibus sibi vivant, et eleemosynas tribuant.

LEGATINE INJUNCTIONS.

adjuvare, mutuaque charitate diligere debeant; sicut Ipse dixit; '*In hoc cognoscent omnes quia Mei discipuli estis, si dilectionem habueritis ad invicem.*'

*Article* 17.

. . . De decimis dandis, sicut in Lege scriptum est: '*Decimam partem ex omnibus frugibus tuis seu primitiis deferas in domum Domini Dei tui.*' Rursum per Prophetam: '*Adferte,*' inquit, '*omnem decimam in horreum Meum ut sit cibus in domo Mea; et probate Me super hoc, si non aperuero vobis cataractas coeli, et effudero benedictionem usque ad abundantiam; et increpabo pro vobis devorantem, qui comedit et corrumpit fructum terræ vestræ; et non erit ultra vinea sterilis in agro*'; dicit Dominus. . . . Unde etiam cum obtestatione præcipimus, ut omnes studeant de omnibus quæ possident decimas dare; quia speciale Domini Dei est: et de novem partibus sibi vivat, et eleemosynas tribuat. . . .

# APPENDIX C (see pp. 235, 236)

## PREFACE TO THE THIRD, AND PROLOGUE AND POSTSCRIPT TO THE FOURTH BOOKS OF THE EXETER 'PENITENTIAL' VOLUME IN THE BODLEIAN LIBRARY.

[Showing that the character of 'a systematically arranged treatise, compiled by a member of a religious house at the bidding of his bishop,' attributed by Mr. Haddan and Bishop Stubbs[1] to the Fourth Book, really belongs to the entire volume.]

### PRÆFATIO LIBRI TERTII.

De mortalibus peccatis ac criminibus, eorumque poenitudine et satisfactione, seu de octo principalium vitiorum origine, vexatione, indiciis, objectionibus, remediisque, necnon et de pugna virtutum contra vitiorum impugnationem, et quibus modis, cogitatione, locutione, et opere perpetrantur peccata, Tertius hic, largiente Domino, ex ædictis Sanctorum patrum defloratis, ut in prologo hujus opusculi præfati sumus,[2] inchoat libellus: Tuis igitur meritis precibusque animatus, studiosissime, Pater, etsi non ut debeo, tamen prout potero, Deo favente, præceptis tuis satisfacere humiliter studebo.

### PROLOGUS LIBRI QUARTI.

Magnopere poposcisti ac precepisti, carissime Rector, ut ad corrigendos et instruendos tuorum mores subditorum quædam ex divinis constitutionibus breviter et succinctim excerperem capitula; ut mens in

[1] Haddan and Stubbs, *Councils*, vol. iii. p. 414, note.

[2] In this passage the compiler seems to adopt as his own, and as the prologue to his entire work, the prologue of his First Book, viz. of Egbert's 'Penitential.'

cunctis Deo familiariter dedita non per simplices et densissimas librorum fatigetur silvas, sed potius compendio breviante, divinis uno in sancto divinarum scripturarum prato circumvallati auctoritatibus, facilius, Deo donante, odoriferos quos cupit, etsi non omnes, saltem vel paucos possit decerpere flores. Et quia sanctæ caritati tuæ summum dilectionis et benevolentiæ obsequium debeo, ut potui, Domino miserante, juxta exiguitatem sensus mei, feci quod jussisti, et quod per te mihi imperavit qui in sancto tuo jugiter residet pectore Deus. Quartus igitur pauperrimæ Excerptionis nostræ ex sanctorum opusculis, *sicut et tres anteriores*, excerptus hic incipit libellus: *Quos omnes*, ductore Deo, tuo sancto nomini dicatos esse cupio. Iste etenim libellus hujus opusculi, quantus constat esse, studio brevitatis ut jam dictum est excerptus, de diversis peccatis ac criminibus eorumque indiciis ac satisfactionibus, ex sacrorum canonum orthodoxorumque patrum libris et institutis.

[*Postscript to Fourth Book.*]

Ecce hæc sunt pauca ex multis sanctarum Scripturarum edictis, Deo favente, succinctim excerpta. Dum enim sanctæ jussioni vestræ parere volui, præsumsi, si ultra vires meas, facere quod optime non novi. Parcat hoc cum cæteris commissis mihi, meritis precibusque vestris, Omnipotens Deus. Sed quia, ut potui, Deo donum feci quod jussisti, obsecro beatitudinem vestram, ut mercedem orationum vestrarum mihi reddere procuretis.

# APPENDIX D (see p. 243)

COMPARISON of the Extracts of Canons, etc., in the Worcester Manuscript belonging to Corpus Christi College, Cambridge (No. 265 of Nasmith), with those in the Cottonian Manuscript (Nero A. 1).

| *Parker MS.* In Library of C.C.C. Cambridge. | *Cottonian MS.* Printed in Thorpe's *Ancient Laws*, vol. ii. pp. 97-127. |
|---|---|
| 'Sacerdotal Laws.' Nos. 1-21 | Nos. 1-21. (In the Introduction: '*Augustinus*,' etc.) |
| 22 | 49 |
| 23 | — |
| 24 | 29 |
| 25 | 34 |
| 26 | — |
| 27 | 37 |
| 28 | 40 |
| 29 | 44 |
| 30 | 98 |
| 31 | |
| 32 | |
| 33 | 99 |
| 34 | 97 |
| 35 | — |
| 36 | — |
| 37 | 45 |
| 38 | 46 |
| 39 | 47 |
| 40 | 48 |
| 41 | 50 |
| 42 | 51 |
| 43 | 52 |
| No. 44 | No. 53 |
| 45 | 56 |
| 46 | — |
| 47 | — |
| 48 | 57 |
| 49 | 58 |
| 50 | 59 |
| 51 | 61 |
| 52 | 63 |
| 53 | 64 |
| 54 | 65 |
| 55 | 66 |
| 56 | 67 |
| 57 | 68 |
| 58 | 69 |
| 59 | 70 |
| 60 | 71 |
| 61 | 72 |
| 62 | 73 |
| 63 | 75 |
| 64 | 76 |
| 65 | 78 |
| 66 | — |

| *Parker MS.* In Library of C.C.C. Cambridge. | *Cottonian MS.* Printed in Thorpe's *Ancient Laws*, vol. ii. pp. 97-127. |
|---|---|
| No. 67 | No. — |
| 68 | — |
| 69 | 80 |
| 70 | 81 |
| 71 | 83 |
| 72 | 84 |
| 73 | 85 |
| 74 | 86 |
| 75 | 87 |
| 76 | 88 |
| 77 | 89 |
| 78 | 90 |
| 79 | 91 |
| 80 | 112 |
| 81 | 92 |
| 82 | 93 |
| 83 | 94 |
| 84 | 95 |
| 85 | 106 |
| 86 | 107 |
| 87 | 101 |
| 88 | 104 |
| 89 | 105 |
| 90 | 149 |
| 91 | — |
| 92 | 152 |
| 93 | 155 |
| 94 | — |
| 95 | — |
| No. 96 | No. — |
| 97 | 157 |
| 98 | — |
| 99 | — |
| 100 | — |
| 101 | 33 |
| 102 | 31 |
| 103 | 129 |
| 104 | 32 |
| 105 | 118 |
| 106 | — |
| 107 | 38 |
| 108 | 122 |
| 109 | — |
| 110 | — |
| 111 | — |
| 112 | 120 |
| 113 | — |
| 114 | 39 |
| 115 | — |
| 116 | — |
| 117 | — |
| 118 | 115 |
| 119 | — |
| 120 | — |
| 121 | — |
| 122 | — |
| 123 | — |

# APPENDIX E (see pp. 285-287)

COMPARISON of *Church-Grith* with the corresponding provisions of Canute's Laws, Ecclesiastical (C. E.), and Secular (C. S.) [The passages which differ more than verbally, or (in Canute's Laws) more than by enlargement of details, are printed in italics.]

| 'CHURCH-GRITH.' | CANUTE'S LAWS. |
|---|---|
| *Article* 1. | *C. E. Article* 2. |
| *This is one of the ordinances which the king of the English composed with the counsel of his witan:—That is, first,* that he will that all God's churches be entitled to full 'grith,' and if ever any man henceforth so violate God's church-grith that he be a homicide within church-walls, then be that 'bot-less'; and let every one of those who are friends to God pursue him, unless it happen that he escape thence, and seek so awful a sanctuary, that the king through that grant him life against full 'bot,' both to God and to men. | Every church is by right in Christ's own 'grith' (protection), and every Christian man has great need that he show great reverence for that 'grith,' because God's 'grith' is of all griths the most excellent in merit, and the best to preserve. . . . And if ever any man henceforth so break God's 'church-grith,' that he be a homicide within church-walls, then be that 'bot-less'; and let every one of them who is a friend to God pursue him: unless it happen that he escape thence, and seek so awful a sanctuary, that the king through that grant him life against full 'bot,'[1] both to God and to men. |

[1] Amends by compensation.

'CHURCH-GRITH.'

*Article* 2.

And that then is first; that he pay his own 'wer' to the king and to Christ, and thereby inlaw himself to 'bot'; *because a Christian king is accounted Christ's vice-gerent among Christian people, and his duty it is to avenge offence to Christ very severely.*

*Article* 3.

And if it then come to 'bot,' and the king allow it, then let 'bot' be made for the 'church-grith' to that church, according to the king's full 'mund-bryce;' and let purification of the minster be gotten, as is thereto befitting; and especially let intercession be fervently made with God.

*Article* 4.

And if else, no man being slain, 'church-grith' be broken, let 'bot' be strictly made, as the deed may be: be it through fighting, be it through robbery, be it through fornication, be it through what it may; first, let 'bot' be made for the 'grith-bryce' to the church, as the deed may be, and as the rank of the church may be.

*Article* 5.

All churches are not secularly entitled to equal rank, although divinely they have like consecration.

CANUTE'S LAWS.

*C. E. Article* 2 (*continued*).

And that is then first; that he pay his own 'wer'[1] to Christ and to the king; and thereby inlaw himself to 'bot.'

*C. E. Article* 2 (*continued*).

And if it then come to 'bot,' and the king allow it, then let 'bot' be made for the 'church-grith' to that church, according to the king's full 'mund-bryce,'[2] and the purification of the minster be gotten as is thereto befitting; and let 'bot' be fully made, both with 'maeg-bot' and 'man-bot';[3] and especially let intercession be fervently made with God.

*C. E. Article* 3.

And if else, no man being slain, 'church-grith' be broken, let 'bot' be strictly made, according as the deed may be; be it through fighting, be it through robbery, be it through what it may be. First, let 'bot' be made for the 'grith-bryce' to the church, according as the deed may be, and as the rank of the church may be.

*C.E. Article* 3 (*continued*).

All churches are not secularly entitled to a like degree of reverence, although divinely they

[1] The price at which a man's life was valued, according to his degree.
[2] Compensation for breach of protection.
[3] Compensations paid for homicide to kinsmen, and to the lord.

'CHURCH-GRITH.'

For the 'grith-bryce' of a chief minster, in cases entitled to 'bot,' let 'bot' be made according to the king's 'mund'; that is, with five pounds by English law; and of a minster of the middle class with a hundred and twenty shillings, that is, according to the king's 'wite'; but of a yet less, with sixty shillings; and for a field-church, with thirty shillings. *Judgment shall ever be with justice, according to the deed, and mitigation according to its degree.*

*Article* 6.

*And respecting tithes, the king and his 'witan' have chosen and decreed, as is just, that one-third part of the tithe which belongs to the church go to the reparation of the church, and a second part to the servants of God; the third to God's poor, and to needy ones in thraldom.*

*Articles* 7, 8.

And be it known to every Christian man that he pay to his Lord his tithe justly, always as the plough traverses the tenth field, on peril of God's mercy, and of

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have like consecration. The 'grith-bryce' of a chief minster, in cases entitled to 'bot,' is according to the king's 'mund,' that is, five pounds by English law; *and in Kent, for the 'mund-bryce,' five pounds to the king, and three to the archbishop;* and of a minster of the middle class, a hundred and twenty shillings, that is, according to the king's 'wite';[1] and of one yet less, *where there is little service, provided there be a burial-place,* sixty shillings; and of a field-church, *where is no burial-place,* thirty shillings.

[*Omitted in Canute's Laws, which restored, in C. E. Article* 11, *the law of Edgar as to manorial churches,* which *'Church-Grith'* had omitted, thus:

*C. E. Article* 14.

*'But if there be any thane who has a church on his boc-land, at which there is a burial-place, let him give the third part of his own tithe to his church. And if any one have a church at which there is no burial-place, let him do for his priest what he will from the nine parts. And let every church-scot go to the old minster, according to every free hearth.'*]

*C. E. Article* 8.

And if then any one will not pay the tithe as we have decreed, that is, the tenth acre, so as the plough traverses it; then let the king's reeve go, and the bishop's,

[1] Fine or mulct.

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the full 'wite' which King Edgar decreed; that is (8), if any one will not justly pay the tithe, then let the king's reeve go, and the mass-priest of the minster, or of the 'land-rica,' and the bishop's reeve, and take forcibly the tenth part for the minster to which it is due, and assign to him the ninth part, and let the eight parts be divided into two, and let the landlord take possession of half, half the bishop; be it a king's man, be it a thane's.

*Article* 9.

And let every tithe of young be paid by Pentecost, on pain of the 'wite,' and of earth-fruits by the equinox, or, at all events, by All Hallows mass.

*Article* 10.

And let 'Rome-feoh' be paid every year by St. Peter's mass; and let him who will not pay it give in addition thirty pence, and to the king pay a hundred and twenty shillings.

*Article* 11.

And let church-scot be paid by Martinmas; and let him who does not pay it indemnify it with twelve-fold, and a hundred and twenty shillings to the king.

*Article* 12.

Plough-alms, it is fitting that they be paid, on pain of the 'wite,'

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and the 'land-rica's,'[1] and the mass-priest of the minster, and take forcibly the tenth part for the minster to which it is due, and assign to him the ninth part; and let the eight parts be divided into two, and let the landlord take possession of half, half the bishop; be it a king's man, be it a thane's.

*C. E. Article* 8 (*first part*).

And let God's dues be lawfully and willingly paid every year, that is . . . a tithe of young by Pentecost, and of earth-fruits by All-Hallows mass.

*C. E. Article* 9.

And 'Rome-feoh' by St. Peter's mass; and whoever withholds it over that day, let him pay the penny to the bishop, and thirty pence thereto, and to the king a hundred and twenty shillings.

*C. E. Article* 10.

And church-scot at Martinmas; and whoever withholds it over that day let him pay it to the bishop, and indemnify him eleven-fold, and to the king a hundred and twenty shillings.

*C. E. Article* 8.

Plough-alms at least by fifteen days after Easter.

[1] *Land-rica* means lord of the soil.

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| every year, when fifteen days are passed after Easter-tide: and let light-scot be paid at Candlemass; let him do it oftener who will. | *C. E. Article* 12.<br>And light-scot *thrice in the year: first on Easter-eve, a half-penny worth of wax for every hide; and again on All-Hallows mass, as much; and again* on the Purification of St. Mary, the like. |
| *Article* 13.<br>And it is most proper that soul-scot be always paid at the open grave. | *C. E. Article* 13 (*first part*).<br>And it is most proper that soul-scot be always paid at the open grave. |
| *Article* 14.<br>And let all God's dues be furthered diligently, as is needful. | *C. E. Article* 14 (*first part*).<br>And let all God's dues be diligently furthered, as it is needful. |
| *Article* 15.<br>And if any one refuse that, let him be compelled to what is right by secular correction; and let that be in common to Christ and to the king, as it formerly was. | *C. S. Article* 49 (*first part*).<br>If any one with violence refuse divine dues, let him pay 'lah-slit' among the Danes, and full 'wite' among the English, or let him clear himself; let him take eleven [parts] and he himself the twelfth.<br>*C. S. Article* 38 (*last part*).<br>Let divine 'bot' be earnestly and constantly sought, according as the books prescribe; and let secular 'bot' be sought according to secular laws. |
| *Article* 16.<br>And let festivals and fasts be rightly held, on peril of the 'wite.' | *C. E. Article* 14 (*last part*).<br>And let festivals and fasts be rightly held, and let every Sunday's festival be held from the noon of Saturday till the dawn of Monday, and every other mass-day as it is commanded. |

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*Article* 17.

And let Sunday marketings be strictly forbidden, on peril of full secular 'wite.'

*Article* 18.

And let the rank of the servants of the altar be respected for fear of God.

*Article* 19.

If a mass-priest, living according to rule, be accused in a simple suit, let him celebrate mass, if he dare, and clear himself on the housel, himself alone; and in a triple suit, let him clear himself, if he dare, likewise on the housel, with two of his fellow-ecclesiastics.

*Article* 20.

If a deacon, living according to rule, be accused in a simple suit, let him take two of his fellow ecclesiastics, and clear himself with them: and if he be accused in a triple suit, let him take six of his fellow ecclesiastics, and clear himself with them, and be himself the seventh.

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*C. E. Article* 15.

And Sunday marketings are also strictly forbid; and every folkmote, unless it be for great necessity; and let huntings and all other worldly works be strictly abstained from on that holy day.

*C. E. Article* 4 (*first and last clauses*).

It is very justly incumbent on all Christian men that . . . they reverence every holy order, according to its rank. . . . Therefore, for fear of God, rank is discreetly to be acknowledged in holy orders.

*C. E. Article* 5.

And if it happen that a priest who lives according to rule be charged with an accusation and with evil practices, and he know himself innocent thereof, let him celebrate mass if he dare, and himself clear himself on the housel in a simple suit; and in a threefold suit let him also, if he dare, clear himself on the housel, with two of his fellow-ecclesiastics.

*C. E. Article* 5 (*continued*).

If a deacon, living according to rule, be accused in a simple suit, let him take two of his fellow ecclesiastics, and with them clear himself: and if he be accused in a threefold suit, let him take six of his fellow ecclesiastics, and with them clear himself, and be himself the seventh.

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*Article* 21.

And if a secular mass-priest be charged with an accusation, who follows no life of rule, let him clear himself so as a deacon who lives a life of rule.

*Article* 22.

If a friendless servant of the altar be charged with an accusation, who has no supporters to his oath; let him go to the 'corsnæd,'[1] and then fare thereat as God will, unless he may clear himself on the housel.

*Article* 23.

And if any one charge one in in holy orders with 'fæhthe,'[2] and say that he was a perpetrator or adviser of homicide, let him clear himself with his kinsmen, who must bear the 'fæhthe' with him, or make 'bot' for it.

*Article* 24.

And if he be kinless, let him clear himself with his associates, or fast for 'corsnæd'; and thereat fare as God may ordain.

*Article* 25.

And no minster-monk may anywhere lawfully demand 'fæhthebot' nor pay 'fæhthe-bot'; he forsakes his law of kin when he submits to monastic law.

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*C. E. Article* 5 (*continued*).

If a secular mass-priest be charged with an accusation, who has no regular life, let him clear himself as a deacon who lives a life of rule.

*C. E. Article* 5 (*continued*).

And if a friendless servant of the altar be charged with an accusation, who has no support to his oath, let him go to the 'corsnæd,' and then thereat fare as God will, unless he may clear himself on the housel.

*C. E. Article* 5 (*continued*).

And if a man in orders be charged with 'fæhthe,' and it be said, that he was perpetrator or adviser of homicide, let him clear himself with his kinsmen, who must bear the 'fæhthe' with him, or make 'bot' for it.

*C. E. Article* 5 (*continued*).

And if he be kinless, let him clear himself with his associates, or betake himself to fasting, if that be necessary, and go to the 'corsnæd,' and thereat fare as God may ordain.

*C. E. Article* 5 (*continued*).

And no minster-monk may lawfully anywhere demand 'fæhthe bot,' nor pay 'fæhthe-bot'; he forsakes his kin when he submits to monastic law.

[1] Ordeal.

[2] A deadly feud,

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*Article* 26.

If a mass-priest become a homicide, or otherwise flagrantly commit crime, let him then forfeit both his order and his country, and be an exile as far as the Pope may prescribe to him, and strictly do penance.

*Article* 27.

If a mass-priest stand anywhere in false witness or in perjury, or be cognisant and perpetrator of thefts; let him then be cast out from the community of ecclesiastics, and forfeit both their society and friendship, and every dignity; unless he the more deeply make 'bot' to God and men, entirely as the bishop may direct him, and find himself 'borh,'[1] that henceforth he will ever abstain from the like; and if he desire to clear himself, let him clear himself according to the degree of the deed, either with a threefold or with a simple 'lad,'[2] according as the deed may be.

*Articles* 28, 29.

If a servant of the altar, by the instruction of books, his own life rightly order, then let him be entitled to the full 'wer' and dignity of a thane, both in life and in the grave. (29) *And if he misorder his life, let his honour wane, according as the deed may be.*

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*C. S. Article* 41.

If a servant of the altar be a homicide, or else work iniquity very enormously; let him then forfeit both degree and country, and go in exile as far as the Pope shall prescribe to him, and earnestly do penance.

*C. E. Article* 5 (*continued*).

And if ever a mass-priest stand anywhere in false witness or in perjury, or be cognisant of and perpetrator of thefts, then let him be cast out from the community of ecclesiastics, and forfeit both their society and friendship, and every dignity; unless he the more deeply make 'bot' to God and men, as the bishop may direct him, and find himself 'borh' that henceforth he will ever abstain from the like. And if he desire to clear himself, then let him clear himself according to the degree of the deed, either with a threefold or with a simple 'lad,' according as the deed may be.

*C. E. Article* 9.

We beseech and instruct all God's servants, and especially priests, that they obey God and love chastity. . . . And let him who will abstain from this (intercourse with women) and preserve his chastity, have God's mercy, and, for worldly honour, be he worthy of thane-law.

[1] Security.

[2] Purgation.

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*Article* 30.

Let him know, if he will, that it befits him not to have any concern either with women, *or with temporal war;* if he desire uprightly to obey God, and observe God's laws, as is properly becoming to his order.

*Article* 31.

And we earnestly instruct, and affectionately beseech, that men of every order live that life which is becoming to them: and we will that henceforth abbots and monks live more according to rule than before this they had in custom.

*Article* 32.

*And the king commands all his reeves, in every place, that ye protect the abbots on all secular occasions, as ye best may; and, as ye desire to have God's or my friendship, that ye aid their stewards everywhere to right; that they themselves may the more uninterruptedly dwell closely in their minsters, and live according to rule.*

*Articles* 33, 34.

And if any one wrong an ecclesiastic or a foreigner, through any means, as to money or as to life; or bind, or beat, or insult him in

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*C. E. Article* 6 (*middle part*).

And we beseech and instruct all God's servants, and especially priests, that they obey God and love chastity, and secure themselves against God's ire, and against the fierce burning which rageth in hell. Full well they know that they have not lawfully through concubinage intercourse with women.

*C. E. Article* 6 (*first part*).

And we will, that men of every order readily submit, each to that law which is becoming to him; and above all, let the servants of God, bishops and abbots, monks and mynchens,[1] submit to law, and live according to rule.

[*Omitted in Canute's Laws.*]

*C. S. Article* 40.

And if any one wrong a man in holy orders, or a foreigner, through any means, as to money or as to life, then shall the king

[1] Nuns.

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any way, then shall the king be unto him in the place of a kinsman and of a protector, unless he else have another. (34) And let 'bot' be made both to him and the king, as is fitting, according as the deed may be, or let him avenge the deed very deeply.

*Article* 35.

It is very justly incumbent on Christian men that they very diligently avenge any offence against God.

*Articles* 36, 37, 38, 39.
(*See below.*)

*Article* 40.

And if any one will properly cleanse the land, then must he inquire and diligently trace where the criminals have their dwelling, who will not desist, nor make 'bot' before God; but wherever they may be found, let them be compelled to right, willingly or unwillingly; or let them altogether

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be unto him in the place of a kinsman and of a protector, unless he have another lord besides; and let 'bot' be made to the king as it may be fitting, or let him avenge the deed very deeply.

*C. S. Article* 42.

If any one bind or beat or grossly insult a man in holy orders, let him make 'bot' to him as may be right, and to the bishop, with an 'altar-bot,' according to the degree of his order; and to the lord or the king, according to the full 'mund-bryce,' or clear himself with a full 'lad.'

*C. S. Article* 40 (*end*).

It belongs very rightly to a Christian king, that he avenge God's anger very deeply, according as the deed may be.

*C. S. Article* 4.

And we command that ye undertake diligently to cleanse the country on every side, and everywhere to desist from evil deeds; and if witches or diviners, 'morth'-workers[1] or adulterers be anywhere found in the land, let them be diligently driven out of this country; or let them

[1] Assassins.

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| withdraw from the country unless they submit and turn to right. | totally perish in the country, except they desist and the more thoroughly amend. And we command that adversaries and outlaws of God and men retire from the country, unless they submit and the more earnestly amend; and let thieves and public robbers forthwith perish unless they desist. |
| | *C. S. Article* 6. |
| | Let manslayers and perjurers, violators of holy orders and adulterers, submit and make 'bot,' or with their sins retire from the country. |
| | *C. S. Article* 7. |
| | Let cheats and liars, robbers and reavers, have God's anger, unless they desist, and the more thoroughly amend: and whoever will lawfully cleanse the country, and suppress injustice, and love righteousness, then must he diligently correct such things, and shun the like. |
| *Article* 41. | [*Omitted in Canute's Laws*— probably as superfluous.] |
| *If a monk or a mass-priest become altogether an apostate, let him be for ever excommunicated, unless he the more readily submit to his duty.* | |
| *Article* 42. | *C. S. Article* 67. |
| And he who holds an outlaw of God in his power over the term that the king may have appointed, he acts, at peril of himself and all | If any one unlawfully have a God-'flyma,'[1] let him give him up to justice, and compensate to him to whom it is due, and pay |

[1] A fugitive from ecclesiastical justice.

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his property, *against Christ's vicegerent, who preserves and sways over Christianity and kingdom as long as God grants it.*

*Article* 43. (*See below.*)

*Article* 44.

And let us zealously venerate right Christianity, and totally despise every heathenism; and let us faithfully cherish our royal lord; and let every friend love his fellow with right fidelity, and cherish him with justice.

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to the king according to his 'wergild,'[1] If any one have and hold an excommunicated person or an outlaw, let him peril himself and all his property.

*C. E. Article* 19.

And let every Christian man do as is needful to him; let him strictly keep his Christianity. . . . And let every friend guide his words and works aright, and carefully keep oath and 'wed' (pledge): and let every injustice be strictly cast out of the country, as far as it can be done: and let God's law be henceforth earnestly loved by word and by works; then will God's mercy be the more ready for us all.

*C. E. Article* 20.

Let us also earnestly do, as we will yet teach; let us all be always faithful and true to our lord, and ever exalt his dignity with all our powers, and execute his will; because all that we ever do as just fidelity to our lord, we do it all to our own great behoof; because God verily is faithful to him who is rightly faithful to his lord. . .

*C. S. Article* 5.

And we earnestly forbid every heathenism, etc.

[1] A fine, for which the relatives or guild-brethren of an offender were answerable.

THE following five articles, which are in *Church-Grith* only, are historical and didactic.

*Article* 36.

*And wise were those secular witan, who to the divine laws of right added secular laws, for the people's government; and directed the 'bot' to Christ and the king, that many should thus of necessity be compelled to do right.*

*Article* 37.

*But in those 'gemots,' though deliberately held in places of note, after Edgar's lifetime, the laws of Christ waned, and the king's laws were impaired.*

*Article* 38.

*And then was separated what was before in common to Christ and the king in secular government; and it has ever been the worse before God and before the world: let it now come to an amendment, if God will it.*

*Article* 39.

*And an amendment, however, may yet come, if it be diligently and earnestly undertaken.*

*Article* 43.

*But let us do as is needful to us; let us take to us for an example that which former secular 'witan' deliberately instituted; Aethelstan, and Edmund, and Edgar who was last; how they worshipped God, and observed God's law, and rendered Christ's tribute, the while that they lived. And let us love God with inward heart, and heed God's laws, as well as we best can.*

# APPENDIX F (see pp. 235-268)

**LETTER of Pope Leo IX. to King Edward the Confessor, urging the removal of the see of Crediton, and its bishop, Leofric, to Exeter: written on the last page of the 'Penitential' manuscript volume, presented by Bishop Leofric to the Church of Exeter, and now in the Bodleian Library (No. 718):**

Leo episcopus, servus servorum Dei, Eadwardo Anglorum Regi, salutem carissimam, cum benedictione Apostolica. Si bene habes, et bene vales, inde non modicas Domino Jesu Christo referimus gratias; et hoc optamus, ut ita luculenter possideas regni gubernacula, ut in æterna maneas tabernacula. Et quia audivimus te circa Dei æcclesias et æcclesiasticos viros studiosum et religiosum esse, unde multum gaudemus, et hoc ammonemus, atque benigne rogamus, ut ita in Dei opere perseverare studeas, quatenus Regi regum Deo placere valeas, atque cum Illo in coelesti regno permaneas.

Notum itaque est nostræ pietati, qualiter Leowricus Episcopus sine Civitate sedem pontificalem tenet; ande multum miramur, non de illo solo, sed de omnibus illis Episcopis qui talia agunt. Cum vero ad vos nostrum miserimus Legatum, de aliis dicemus. Nunc hoc de nostro fratre jam dicto Leowrico præcipimus atque rogamus; ut propter Deum, et nostri amoris causa, adjutorium præbeas, ut a Credionensi villula ad civitatem Exonia (? Exoniæ) sedem Episcopalem possit mutare. Hæc et alia bona opera ita agere studeas, ut a Christo Domino æternum regnum adquirere valeas.

Vale, Karissime semper in Domino.

# APPENDIX G (see pp. 263-268)

CLAUSES in the Exeter Rule of Life for Canons, which relate to meals and the dormitory. (From the manuscript in the Library of Corpus Christi College, Cambridge: Nasmith's No. 191.)

*Article* 5. *De eo quod in congregatione canonica equaliter cibus et potus accipiatur.*

Solet in plerisque canonicorum congregationibus inrationabiliter atque indiscrete fieri, ut non nulli clerici qui divitiis affluant aut parvum aut nihil utilitatis ecclesie conferant, majorem ceteris divinum strenue peragentibus officium annonam accipiant; cum hoc ita fieri debere nunquam in auctoritate scripturarum, nec in traditionibus sanctorum patrum, possit inveniri. Est nempe rationabile, justumque coram Deo et hominibus, ut in unaquaque canonica congregatione, a minimo usque ad maximum, cibum et potum æqualiter accipiant. Hi videlicet, qui propter aliquam utilitatem in numero canonicorum fuerint admissi, quanquam enim plerique subditorum a prælatis rebus quibuslibet aliis plus ceteris merito solent honorari, in hac tamen societate, reclusa personarum acceptione, una (? usus) debet cibi et potus equalis esse.

*Article* 6. *De mensura cibi et potus.*

Quando clerus una aut bina vice in die reficit, accipiat a minore usque ad maximum iiii libras panis; et quando bis in die reficit, pulmentum vero ad sextam, unam ministrationem de carne inter duos, et cibaria alia, una accipiant; et, si cibaria non habent, tunc duas ministrationes de carne habeant. Illo tempore quando quadragesimalem vitam debent ducere, tunc ad sextam inter duos clericos portionem de formatico, et cibaria alia, accipiant. Et si pisces habuerint aut legumen aut aliud aliquid, addatur et tertium; et ad cenam cibaria alia inter duos, et portionem de formatico accipiant; et si Deus amplius dederit,

cum gratiarum actione accipiant. Quando autem in die una refectio fuerit, tunc cibaria una inter duos, et portionem de formatico et ministrationem de legumine aut aliud pulmentum accipiant. Et si contigerit quod illo anno glandes vel fagina non sint, et non habent unde hanc mensuram de carne impleant, prevideat Episcopus, vel qui sub eo est, juxta quod Deus possibilitatem dederit, aut de quadragesimali alimento, aut alio, unde consolationem habeant. Et si eadem regio vinifera fuerit, accipiant per singulos dies quinque libras vini, si tamen sterilitas impedimentum non fecerit temporis. Si vero vinifera plena non fuerit, tres libras vini, et tres cervise, et caveant ebrietatem. Si vero contigerit quod vinum minus fuerit, et istam mensuram Episcopus, vel qui sub eo est, implere non potest, juxta quod prevalet impleat de cervisa, et eis consolationem faciat; et illis qui se a vino abstinent prævideat Episcopus, vel qui sub eo est, ut tantum habeant de cervisa quantum de vino habere debuerant. Quando vero facultas ecclesie non supetit, aut sterilitas terre extiterit, sicut crebro, peccatis nostris prepedientibus, evenire solet, et prelati quantum debent dare vinum aut siceram seu cervisam canonicis nequiverint, provideant eis potum ex diversis materiis confectum; non ei autem murmurent, sed magis cum gratiarum actione quod dari sibi potest accipiant, animadvertentes Johannem Baptistam, qui nec vinum, nec siceram, nec aliquid quod potest inebriare bibit; quia ubi ebrietas fit, ibi flagitium atque peccatum est. Et hoc admonemus, ut clerus sobriam semper ducat vitam; et, quia persuadere non possumus ut vinum non bibant, vel consentiamus hoc, ut saltem in illis ebrietas non dominetur; quia omnes ebriosos Apostolus a regno Dei extraneos esse denuntiat, nisi per dignam pœnitentiam emendaverint. Habeant igitur canonici ortos olerum, ut cum ceteris additamentis aliquod pulmentum cotidie sibi vicissim ministrent.

### *Article 7. De sephalanaxiis coquini.*

Clerici canonici sic sibi invicem serviant, ut nullus excussetur a coquine officio, nisi egritudine aut causa gravis utilitatis quis preoccupatus fuerit; quia exinde major merces et caritas adquiritur, imbecillibus autem fratribus procurrentur solacia, ut non cum tristitia hoc faciant, sed habeant solacia omnes secundum modum congregationis aut positionem loci. Archidiaconus, aut prepositus, vel cellerarius, et qui in majoribus utilitatibus occupati sunt, isti excusentur a coquina; ceteri autem sub caritate invicem serviant. Egressurus de septimana sabbato munditias vasorum faciat, et vasa ministerii sui que ad ministrandum accepit sana et munda cellerario reconsignet; et si aliquid ex illis minuatum fuerit, ad capitulum die sabbato veniam petat, et vasa vel quod minuatum est in loco restituat.

*Article* II. *De eo quod diligenter munienda sunt claustra canonicorum in quibus dormiunt canonici.*

Prepositorum cura sit, ut subditorum mentes sacrarum scripturarum lectionibus assidue muniant, ne lupus invisibilis aditum inveniat, quo ovile Domini ingredi et aliquam ovium subripere valeat. Et præterea necesse est, ut claustra que clero sibi commisso canonice servandum est firmis undique circumdent munitionibus, ut nulli omnino intrandi aut exeundi nisi per portam pateat aditus. Sint etiam interius dormitoria, refectoria, cellaria, et cetere habitationes usibus fratrum in una societate viventium necessaria. Omnes enim in uno dormiant dormitorio, præter illos quibus Episcopus licentiam dederit secundum quod ei rationabiliter visum fuerit. Et in ipsis claustris per dispositas mansiones dormiant separatim per singulos singuli lectulos, mixti cum senioribus propter prudentiam bonam; ut seniores provideant quod juniores secundum Deum agant; et in ipsa claustra nulla femina introeat, nec laicus homo, præter tantum, si Episcopus aut archidiaconus vel præpositus jusserint ut in refectorio pro refectionis causa veniant, relictis armis suis ante refectorium. Et, si necesse fuerit ad opera facienda, intrent ibi laici homines; ut, ubi perfectum habuerint opus suum, cum summa festinatione egrediantur foras. Et si coci clerici desunt, et opus fuerit ut laici coci ad coquinandum tantum ingrediantur, ut expleto ministerio suo cum celeritate exeant foras.

# APPENDIX H (see pp. 311-314).

**CONSECRATION Charters of Churches, endowed by their Founders at the time of consecration with tithes.**

1. *Cadillac in France:* (from 'Forms of Marculfus,' Baluze, Capitularia Regum Francorum; vol. ii. p. 442.)

'Regnante Domino Jesu Christo in perpetuum; Ego ille Episcopus: Omnibus non habetur incognitum, qualiter ego, ampliante Domino, in pago in villa cujus vocabulo est ibi Sancti . . . atque Sancti Stephani, vel in honore ceterorum sanctorum quorum ibidem reliquiæ quiescunt, construxi, atque Kalendas Junii dedicare certavi, consentientibus etiam confratribus, tam canonicis quam et monachis, vel ceteris hominibus qui ad præsentes fuerunt, ut villæ quarum vocabula sunt Cadiliaco, etc. etc. etc., ut ibidem aspicere deberent, ad missas veniendi et ad baptismum vel prædicationem, *et ut decimas suas ad memoratam basilicam dare deberent.* Propterea, pro firmitatis studium hanc consensionem scribere rogavimus, ut temporibus nostris atque successoribus nostris hæc nostra consensio firma et stabilis valeat permanere, et sciant omnes, tam præsentes quam et absentes, seu successores nostri, quia dedimus in memoratum illum Cadiliaco duos mansos ad ipsam luminariam providendam, vel unde presbyter qui ibidem officium fungere videtur vivere debeat. Et addimus ad hoc insuper de terra arabile . . ., et de vinea aripenne uno et dimidio, ut ævo tempore in elimosinam nostram seu successorum nostrorum ita valeat perdurare. Actum fuit hoc ab die memorato KL. Junii, in anno VIII Christo propitio Imperii Domni Karoli Serenissimi Augusti, et anno [xliii] regni ejus in Francia, atque xxxv in Italia, Indictione prima; in Dei nomine feliciter: Amen. His præsentibus qui adfuerunt illuc his præsentibus.'

2. *Exhall, in Warwickshire* (from Dugdale's *History of Warwickshire,* 1656; p. 630).

'Universis etc. Simon, Dei Gratia Wigorniensis Ecclesiæ minister humilis, in Domino salutem. Confirmo præsenti pagina donationem

quam probi homines de Eccleshala donaverunt ecclesiæ prædicti manerii, in die qua eam dedicavi. Sciendum est autem, quod Robertus Corbusceon et ejus uxor donaverunt eidem ecclesiæ in perpetuum unam virgatam terræ, cum prato ad tantum terræ pertinente, et totam suam partem ejusdem crofti, exceptis duabus acris, quas Wido erga eum excambiavit ad opus ejusdem ecclesiæ, et cum moro sub crofto. Wido vero ex sua parte quatuor acras in campo, et dimidium in prato; et Robertus similiter duas acras. Hanc donationem similiter omnes fecerunt, *cum decimis suis plenariis*, eidem ecclesiæ, liberam et quietam ab omni seculari servitio. Et ego ex mea parte volo et præcipio, ut libera sit et quieta ab omni Episcopali consuetudine. Qui autem aliquid inde subtraxerit, sive minuere vel perturbare præsumpserit, anathematis gladio feriatur. Testibus, Gervasio Archidiacono, Radulpho Priore de Stanes, Pagano Capellano, etc.'

3, *Hay, in Brecknockshire* (from Kennett's *Case of Impropriations*, 1704; Appendix 3, p. 4).

'Bernardus, Dei gratia Episcopus de Sancto David, omnibus sanctæ Dei Ecclesiæ fidelibus salutem, Deique benedictionem et suam. Sciant tam presentes quam futuri, quod quando dedicavimus ecclesiam beatæ Mariæ de Haya, Willielmus Revel, concessu Bernardi de Novo Mercato qui interfuit dedicationi, dedit et concessit in perpetuam elemosinam et dotem ipsius ecclesiæ xv acras terræ, et duas mansuras terræ, videlicet, Lavenochi prepositi et Alverici bubulci, et totam illam terram quæ est ab illis mansuris sursum in nemore usque ad divisas de Ewias, et in bosco et in plano; *dedit etiam eidem ecclesiæ totam decimam totius terræ suæ de Haia, in omnibus rebus, et de terra Ivonis et de Meleniauc, et de omnibus istis qui de feudo Haiæ tenebant. Et ne in posterum inde fiat dubitatio, has determinate dedit et concessit decimas; videlicet, de blado et foeno, et de pullanis et vitulis, de agnis et porcellis, de lana et caseo, et virgulto, et de reditu Walensium, et pasnagio, et placitis.* Quicunque vero aliquid inde subtraxerint vel diminuerint, excommunicentur, et a consortio Dei omniumque Sanctorum ejus sequestrentur, donee ad emendationem veniant. Hujus autem donationis testes sunt clerici nostri; videlicet, Willelmus archidiaconus de Kermerdin, et Elias Archidiaconus de Brechon, et Brientius clericus Regis Henrici, et Bernardus de Novo Mercato, et Ricardus Filius Puncii, Valete.

[*Ex Cartulario Prioratus S. Johannis Evang. de Brechon.* MS. f. 47.]

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